

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

KEURIG, INCORPORATED,

Plaintiff,

V.

KRAFT FOODS GLOBAL, INC.,
TASSIMO CORPORATION, and
KRAFT FOODS INC.,

Defendants.

C.A. No. 07-17 (GMS)

JURY TRIAL DEMANDED

PUBLIC VERSION

DEFENDANTS' OPPOSITION TO KEURIG'S MOTION *IN LIMINE* NO. 3

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Corporation, and Kraft Foods Inc.*

Dated: August 15, 2008
Public Version Dated: August 22, 2008
878744 / 31118

Defendants Kraft Foods Global, Inc., Tassimo Corporation, and Kraft Foods Inc. (collectively "Kraft"), by counsel, hereby file this opposition to Keurig's Motion *in Limine* No.

3. Plaintiff Keurig, Incorporated ("Keurig") seeks to exclude evidence at trial regarding production records and other documents they asked for during the course of litigation, which Kraft produced prior to the close of discovery. Keurig's Motion should be denied for two reasons. First, Keurig's Motion should be denied because Keurig asserts baseless grounds for exclusion of this highly-relevant and probative evidence for which an appropriate foundation has been laid. Second, not until such evidence is actually offered at trial will the Court be in a position to even consider excluding the evidence.

ARGUMENT

Keurig seeks to exclude two classes of business records produced during discovery by Kraft that show the public use of Kraft's products anticipates Keurig's '762 patent: (1) documents retained by Kraft employees Janice Appleton, Helen Glus, and Geraldine Greto ("shipping documents") that show Kraft's Kenco Singles cartridges ("Singles Cartridges") were shipped to the United States for consumption on multiple occasions prior to February 18, 1999; and (2) [REDACTED] production records ("production records")¹ [REDACTED]

Keurig seeks to evade the issue of whether its patent is invalid by moving the Court to exclude documentary evidence that demonstrates the public use of Singles Cartridges. Keurig seeks to exclude both classes of documentary evidence on the same grounds – that each is hearsay not subject to any exception and that each is untrustworthy. Keurig is wrong and wastes this Court's time by citing the Federal Circuit's decisions in *Medichem* and *Chen*, which have

¹ As a courtesy, Kraft also provided Keurig with a native Excel version of the production records.

nothing to do with Rule 803 or business records, but instead relate to corroborating inventor testimony that is presumed to be unreliable. Mot. at 3.


As an initial matter, Keurig's Motion does not even contend that the evidence it seeks to exclude is not relevant or probative. Indeed such a contention would border on the frivolous. The relevance of the business records at issue is significant as they prove that the '762 Patent is invalid due to prior use of Singles Cartridges in this country. *See* 35 U.S.C. §§ 102(a), (b). Stated another way, when the documents are introduced, Keurig's case evaporates. The shipping documents demonstrate, without question, that Singles Cartridges were circulated for use in the United States as early as 1995. Janice Appleton, Helen Glus, and Geraldine Greto are all Kraft employees who testified at length during deposition about the documents in question. And all three witnesses testified at deposition to their own personal knowledge that Singles cartridges were in public use in the United States prior to February 18, 1999. *See, e.g.,* Greto Depo. Tr. (Ex. 1) 19:22–20:15; Glus Depo. Tr. (Ex. 2) at 11:23–14:21; Appleton Depo. Tr. (Ex. 3) 41:16–42:9. Moreover, Ms. Glus and Ms. Greto will be available at trial.

With respect to the production documents, the analysis is the same.² Kraft produced the documents promptly upon their discovery in March 2008. Because all counsel were previously scheduled to be in England for Keurig's depositions of Mr. Hubert Weber and Mr. Andrew Bentley, Kraft also made the production records' custodian, Michael Tamblin, available to testify about those records. At deposition, Tamblin's testimony demonstrated that Kraft's regular practice was to keep production records for the Singles business. That evidence, and the

² Contrary to Keurig's assertion, Kraft's case is not limited to the Kraft Kenco Medium Roast Singles Cartridges [REDACTED]. Although, Kraft focused on those cartridges solely for purposes of summary judgment, Kraft asserts that all varieties Singles cartridges listed on the shipping documents [REDACTED] anticipate the '762 Patent.

Appleton, Glus, Greto documents, are highly relevant and probative of the invalidity of the '762 patent.

Further, the hearsay exclusionary rule does not apply to either the shipping documents or to the production records because they clearly admissible under the business records exception set forth in Fed. R. Evid. 803(6). Contrary to Keurig's assertion, Kraft can satisfy the foundation requirements of Rule 803(6) for both the shipping documents and for the production documents. In fact, a close examination of the depositions of Appleton, Glus, and Greto demonstrates that an appropriate foundation was laid for the admissibility of the documents.³ See e.g., Ex. 1 at 8:13–28:22; Ex. 2 at 29:4–30:14; Ex. 3 at 23:21–62:3. Each witness testified from her own personal knowledge. See, e.g., Ex. 1 at 9:2–10:15; 26:11–28:22; Ex. 2 at 20:19–21:18; 25:24–26:14; Ex. 3 at 23:21–25:8; 64:20–65:10; see also *United States v. Console*, 13 F.3d 641, 658 (3d Cir. 1993) (Documents created from personal knowledge “provide sufficient indicia of trustworthiness to satisfy the business record exception.”). And each testified that the files from which the documents came were regularly kept in the ordinary course of their responsibilities as employees of Kraft. Ex. 1 at 8:14–9:5; Ex. 2 at 17:4–17:17; Ex. 3 at 79:15–80:3. Finally, there is no suggestion that the shipping documents were created for purposes of this litigation.

The same is true for the production records. An appropriate foundation was laid at deposition for the admissibility of the documents. As described above, because counsel were scheduled to be in England for two of Keurig's depositions, Kraft offered Michael Tamblin to testify on short notice because he was the plant master data-controller working on 

³ Moreover, any communications from Appleton, Glus, and Greto are admissible as present sense impressions and were authenticated as such at deposition. In addition, the shipping documents are admissible under Fed. R. Evid. 807 because: (1) the relevance of these shipping documents are not contested, (2) Keurig has had sufficient opportunity to address these documents in advance of trial, and (3) they are more probative than any other evidence that could be obtained by reasonable efforts for events that took place a decade ago.

computer system that generated the records, Tamblin Depo. Tr. (Ex. 4) at 5:21–23, and prior to 2005, Tamblin was the production manager who was familiar with data entry into the computer. *Id.* at 16:5–8. Tamblin, the custodian of the production records, was questioned by Keurig’s counsel at length regarding the production records and his personal involvement in generating and producing the documents. *Id.* at 18:14–16. And again, there is no suggestion that the production records were created for purposes of litigation; Tamblin testified from personal knowledge that production records were regularly kept in the ordinary course of Kraft’s business. *Id.* at 16:24–17:4.⁴

To the extent, as Keurig claims, Tamblin couldn’t recall certain details about the production documents, that does not mean the documents are inadmissible. Rule 803(6) does not require that the custodian to have created the records but instead that the custodian be familiar with the system from which they were generated. *United States v. Pellulo*, 964 F.2d 193, 201 (3d Cir. 1992). Mr. Tamblin requested Kraft’s IT personnel to generate a program that could query the [REDACTED] production database to create the records in question. Ex. 4 at 18:14–19:21. Furthermore, Mr. Tamblin used the system personally in his prior role as a production manager with a different division [REDACTED], which includes the Singles business. *Id.* at 14:22–16:4. Any perceived deficiencies in testimony goes to the weight of the evidence, and should be evaluated by a jury. Keurig had ample opportunity to depose Tamblin and will have further opportunity to explore his testimony at trial. But the production documents are admissible as business records.

Similarly, Keurig’s final argument that the documents should not be admitted because they are “incomplete and untrustworthy” is unpersuasive. Mot. At 5. Rule 803(6) declares that

⁴ Notably, in a contemporaneous motion *in limine*, Keurig is also seeking to exclude the testimony of witnesses that can also authenticate the production records – and in greater detail.

business records are admissible “unless the source of the information or the method or circumstances of preparation indicate lack of trustworthiness.” Fed. R. Evid. 803(6). Neither is present here, Keurig’s misleading citations to *Medichem* and *Chen* notwithstanding. As described above, the sources of the documents – Appleton, Glus, Greto, and Tamblin all testified and were questioned at length by Keurig’s counsel regarding the production records and each’s personal involvement in generating, maintaining, and producing the documents. Once again, Keurig’s counsel had the opportunity to question them on any deficiency in their testimony or in the production of documents, which goes to the weight of the evidence, not its admissibility.

CONCLUSION

For the foregoing reasons, Keurig’s Motion should be denied.

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*Attorneys for Defendants
Kraft Foods Global, Inc., Tassimo
Corporation, and Kraft Foods Inc.*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CERTIFICATE OF SERVICE

I, David E. Moore, hereby certify that on August 22, 2008, the attached document was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading.

I further certify that on August 22, 2008, the attached document was Electronically Mailed to the following person(s):

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Exhibit 1

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF DELAWARE

-----X
3 KEURIG, INCORPORATED,
4 Plaintiff,
-against-

5
KRAFT FOODS GLOBAL, INC., TASSIMO CORPORATION &
6 KRAFT FOODS, INC.,
7 Defendants.

-----X
8
9
555 South Broadway
10 Tarrytown, New York 10591
11

March 5th, 2008
12 2:00 p.m.
13
14

15 Videotaped Deposition of the Defendant,
16 by: GERALDINE A. GRETO, held pursuant to Court
17 Order, at the above time and place, before Notary
18 Public of the State of New York.
19
20
21
22

23 ELLEN GRAUER COURT REPORTING CO. LLC
126 East 56th Street, Fifth Floor
24 New York, New York 10022
212-750-6434
25 REF: 86864

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11 BY: DAVID SCHLITZ, ESQUIRE

12 THOMAS MARCOUX, ESQUIRE
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 14 Kraft Foods

15 555 South Broadway
 16 Tarrytown, New York 10591

17 ALSO PRESENT:

18 FRED ESPOSITO, Videographer
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 20
 21
 22
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1 FEDERAL STIPULATIONS

2
 3 IT IS HEREBY STIPULATED AND AGREED, by
 4 and between the attorneys for the respective parties
 5 herein, that the sealing and filing of the within
 6 deposition be waived; that such deposition may be
 7 signed and sworn to before any officer authorized to
 8 administer an oath, with the same force and effect
 9 as if signed and sworn to before the officer before
 10 whom said deposition is taken.

11 IT IS FURTHER STIPULATED AND AGREED,
 12 that all objections, except as to form, are reserved
 13 to the time of trial.
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<p style="text-align: right;">Page 6</p> <p>1 PROCEEDINGS</p> <p>2 * * * *</p> <p>3 VIDEOGRAPHER: This is tape one.</p> <p>4 We're now on the record at 2:00 p.m.,</p> <p>5 Wednesday, March 5th, 2008.</p> <p>6 This is the opening of the</p> <p>7 deposition of Geraldine A. Greto, in</p> <p>8 the matter of Keurig, Incorporated</p> <p>9 versus Kraft Foods. This deposition is</p> <p>10 being held at Kraft Foods.</p> <p>11 The court reporter is Lisa Regen,</p> <p>12 with Ellen Grauer Court Reporting. I'm</p> <p>13 the legal videographer, Fred Esposito</p> <p>14 with Ellen Grauer. Counsel, please</p> <p>15 introduce themselves.</p> <p>16 MR. SCHLITZ: My name is David</p> <p>17 Schlitz from the law firm of Baker</p> <p>18 Botts. And I represent the Kraft</p> <p>19 defendants.</p> <p>20 MR. HRYCYSZN: Gerry Hrycyszyn</p> <p>21 with Wolf Greenfield. I represent</p> <p>22 Keurig, Incorporated.</p> <p>23 MR. MARCOUX: Thomas Marcoux. I'm</p> <p>24 in-house counsel at Kraft Foods.</p> <p>25 VIDEOGRAPHER: Will the court</p>	<p style="text-align: right;">Page 8</p> <p>1 GRETO</p> <p>2 Q Is that White Plains in the State</p> <p>3 of New York?</p> <p>4 A Yes, White Plains, New York.</p> <p>5 Q And for whom did you work?</p> <p>6 A Bill Craig.</p> <p>7 Q Now, did there come a time in</p> <p>8 1994, when there was a Kenco Singles Machine at</p> <p>9 White Plains?</p> <p>10 A Yes.</p> <p>11 Q Do you know approximately when in</p> <p>12 1994?</p> <p>13 A I think it was September.</p> <p>14 Q Okay, now did you keep a file with</p> <p>15 regard to the Kenco Singles Machine and Kenco</p> <p>16 Singles Cartridges?</p> <p>17 A Yes.</p> <p>18 Q Where did you keep that file?</p> <p>19 A In the file drawer, right next to</p> <p>20 my chair where I sit.</p> <p>21 Q And you did so as part of your</p> <p>22 work?</p> <p>23 A Is it part of my work?</p> <p>24 Q Yes.</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 7</p> <p>1 reporter please swear in the witness?</p> <p>2 GERALDINE A. GRETO,</p> <p>3 having been duly sworn by Notary</p> <p>4 Public Lisa Regen, upon examination,</p> <p>5 testified as follows:</p> <p>6</p> <p>7 THE REPORTER: Please state your</p> <p>8 full name and address for the record.</p> <p>9 THE WITNESS: Geraldine A. Greto,</p> <p>10 65 Arthur Court, Port Chester, New York</p> <p>11 10573.</p> <p>12 EXAMINATION BY</p> <p>13 MR. SCHLITZ:</p> <p>14 Q Ms. Greto, I know that you're</p> <p>15 nervous about this deposition. Just relax and</p> <p>16 listen to the questions. Just answer the questions</p> <p>17 to the best of your knowledge. And if you want to</p> <p>18 take a break at any time, feel free to do so. If</p> <p>19 you want some water, just let us know.</p> <p>20 In 1994, by whom were you</p> <p>21 employed?</p> <p>22 A Kraft Foods.</p> <p>23 Q And at what Kraft Foods location</p> <p>24 were you employed?</p> <p>25 A White Plains.</p>	<p style="text-align: right;">Page 9</p> <p>1 GRETO</p> <p>2 Q Did you provide the contents of</p> <p>3 that file to Kraft's attorney for production in this</p> <p>4 case?</p> <p>5 A Yes.</p> <p>6 MR. SCHLITZ: This would be</p> <p>7 Defendant's Exhibit 74.</p> <p>8 (Whereupon Defendant's Exhibit 74</p> <p>9 - document Bates stamped K0017256 was</p> <p>10 marked for identification.)</p> <p>11 Q Ms. Greto, I'd ask you to take a</p> <p>12 moment to look at the document.</p> <p>13 A Yes.</p> <p>14 Q Is this one of the documents that</p> <p>15 came out of the file we just mentioned?</p> <p>16 A Yes.</p> <p>17 Q Now, it's dated September 14th,</p> <p>18 1994; is that correct?</p> <p>19 A Uh-huh.</p> <p>20 Q And at the bottom -- it is in</p> <p>21 memorandum form. It says, from Bill Craig.</p> <p>22 Do you see that?</p> <p>23 A Yes.</p> <p>24 Q And it says, at GF White Plains.</p> <p>25 What is GF White Plains?</p>

<p style="text-align: right;">Page 10</p> <p>1 GRETO</p> <p>2 A General Foods.</p> <p>3 Q Okay, I'm sorry, go ahead. You</p> <p>4 were going to say something?</p> <p>5 A We were General Foods before we</p> <p>6 were Kraft.</p> <p>7 Q And where it says thanks, it says</p> <p>8 Bill/GG?</p> <p>9 A Right.</p> <p>10 Q Is GG your initials?</p> <p>11 A That's me; right.</p> <p>12 Q So did you prepare this document?</p> <p>13 A Yes.</p> <p>14 Q And did you sign it?</p> <p>15 A Yes.</p> <p>16 Q Now, it says -- first of all, you</p> <p>17 see that above the line, there is a little coffee</p> <p>18 cup with steam coming out?</p> <p>19 A Yeah.</p> <p>20 Q Can you tell me what that is?</p> <p>21 A It's a coffee cup with steam</p> <p>22 coming out of it. And I -- that is my format, my</p> <p>23 template I use for when I do memos. And because we</p> <p>24 were in Maxwell House Coffee, I used to put it on</p> <p>25 all my little memos, not just that one, all of them.</p>	<p style="text-align: right;">Page 12</p> <p>1 GRETO</p> <p>2 that?</p> <p>3 A When I send a fax, I always note,</p> <p>4 you know, it went through.</p> <p>5 Q Now, when you say everybody loves</p> <p>6 it, were you among the people who were using it?</p> <p>7 A Oh, yes.</p> <p>8 Q And when you were using the Kenco</p> <p>9 machines, were you also using the Kenco Singles</p> <p>10 capsules?</p> <p>11 A Yes.</p> <p>12 Q And when you used the Kenco</p> <p>13 Singles capsules, did you use them in between</p> <p>14 September 14, 1994, and the end of December 31st,</p> <p>15 nineteen -- during 1994?</p> <p>16 A Yes.</p> <p>17 Q Okay, and amongst the capsules you</p> <p>18 used, did you use capsules for coffee?</p> <p>19 A Yes.</p> <p>20 Q And when you used the capsules for</p> <p>21 coffee, do you remember what flavor you used?</p> <p>22 A I used the medium.</p> <p>23 Q Is that the medium roast?</p> <p>24 A Medium roast, yes.</p> <p>25 Q Did you use the Kenco Singles</p>
<p style="text-align: right;">Page 11</p> <p>1 GRETO</p> <p>2 Q And in the body of the memo it</p> <p>3 says, "We received the Michigan machine." Do you</p> <p>4 see that?</p> <p>5 A Right.</p> <p>6 Q Do you know what the reference to</p> <p>7 the Michigan machine is?</p> <p>8 A It's the Kenco machine because it</p> <p>9 was the Michigan project, or Project Michigan they</p> <p>10 called it.</p> <p>11 Q It says, "It works great.</p> <p>12 Everybody loves it."</p> <p>13 A Right.</p> <p>14 Q When you say, "everybody loves it"</p> <p>15 what did that mean?</p> <p>16 A Everybody who drank the coffee and</p> <p>17 used it.</p> <p>18 Q And when you say everybody that</p> <p>19 drank the coffee and used it, who was using the</p> <p>20 Kenco Singles machine and Kenco cartridges?</p> <p>21 A All the employees in our area and</p> <p>22 whoever else came to visit. Any repair people or --</p> <p>23 it was out there for anyone to use.</p> <p>24 Q Now, there is I believe a set of</p> <p>25 initials. And then it says "9:16 a.m." Do you see</p>	<p style="text-align: right;">Page 13</p> <p>1 GRETO</p> <p>2 coffee capsules in '95, 1995?</p> <p>3 A Yes.</p> <p>4 Q Did you -- same question for '96?</p> <p>5 A Yes.</p> <p>6 Q Same question for '97?</p> <p>7 A Yes.</p> <p>8 Q And the same question for '98?</p> <p>9 A Yes.</p> <p>10 MR. SCHLITZ: Now, would you mark</p> <p>11 this?</p> <p>12 (Whereupon Defendant's Exhibit</p> <p>13 75 - document Bates stamped K0017254</p> <p>14 was marked for identification.)</p> <p>15 Q Now, I would ask you to take a</p> <p>16 moment and look at -- we have put in front of you</p> <p>17 Defendant's Exhibit 75, which has the Bates numbers</p> <p>18 K0017254, and K0017255.</p> <p>19 If you would take the time to look</p> <p>20 at those two pages and tell me after you have done</p> <p>21 so.</p> <p>22 A Tell me -- tell you what it says?</p> <p>23 Q No, just tell me you have looked</p> <p>24 at it and you're ready to answer questions.</p> <p>25 A You can ask me questions.</p>

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GRETO

Q First of all, is this one of the documents that came out of the file that you kept --

A Yes.

Q -- with regard to Kenco Singles. Now, looking at this, whose handwriting is this?

A Mine.

Q And at the top of the page it says, "eight bags in each case, twenty cartridges in each bag." Can you explain what that means?

A When you got a case, there is eight bags in it. And each of the bags contained twenty cartridges.

Q Well, is this something that you looked at and counted, and then wrote down on this page?

A Well, yes, I counted them, yes. So that I would know how many we have.

Q Now, then it says, "received machine 9/2/1994." Is that September 2nd, 1994?

A Yes.

Q And so, if you look back at Defendant's Exhibit 74, the first exhibit in front of you?

A Uh-huh.

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GRETO

A Right.

Q Then you said that each bag had twenty cartridges. So we take forty-eight times twenty and you got nine sixty; is that correct?

A Right.

Q Now, then we come down a little bit. And we have, you see where it says 3/21/1995?

A Yes.

Q Is that March 21st, 1995?

A Yes.

Q Can you explain what you have here between for March 21st, 1995?

A It would mean to me that they did not include the flavors espresso and cappi. And my boss said, let's try that. Let's get some. And that's what I did.

Q Okay, now cappi, is that capuccino?

A Yes.

Q Now, then we have these lines. And then you have 6/95. You see that?

A Right.

Q Is that June '95?

A Yes.

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GRETO

Q And then look at 75, it says you received the machine on September 2nd, '94. And then you wrote this memo on September, twelve days later?

A Right.

Q Saying that you actually received the Michigan machine?

A Right.

Q Now, then you come down right below that. And it says "W/six cases of coffee, three cases of tea, one case of hot chocolate." Do you see that?

A Yes.

Q Okay, so let's take that first. What does it mean, "W/six cases"?

A The word with, W is with, slash, so with the machine. I recall that this means that they sent also the capsules, the cartridges, coffee, tea and hot chocolate.

Q Okay, now, and then under bags, you have, "We have four cases." And above you had said that each case had eight. So six times eight is forty-eight. So that is why -- that is the forty-eight; is that correct?

Page 17

GRETO

Q Okay, and I can't -- I'm having a little hard time. It says, ordered something received -- what does that mean?

A Ordered then received. So the following in parenthesis cases.

Q So you you're now listing below that cases that you actually received?

A Yes.

Q And you have the number of cases. You have the flavor. Then a little bit you have a bags, number of cartridges then you have something, already had from previous cartridges some numbers; is that right? Do you see that?

A Yes.

Q So let's take two lines down, with medium roast. You order and received two cases of medium roast; is that correct?

A Yes.

Q And based on your previous count, since each case had eight bags, you listed here, sixteen bags of medium roast; is that right?

A Uh-huh, yes.

Q And that would mean that you got three hundred, since each bag had twenty cartridges,

Page 18

Page 20

1 GRETO
 2 you had three twenty cartridges; right?
 3 A Yes.
 4 Q You already had from previous
 5 cartridges you have eighty in stock; is that
 6 correct?
 7 A Yes.
 8 Q Okay, and since each case has a
 9 hundred and sixty, you had used by this point June,
 10 '95, you used at least eighty; is that correct, of
 11 the medium roast?
 12 A Yes, that's correct.
 13 Q Now, if you turn to the next page,
 14 0017255, you see at the top, it says, "had as of"
 15 and then six. It seems like you have inserted a
 16 number five there?
 17 A Yes, I think I realized I should
 18 have put the date. And that means the fifth, I
 19 think.
 20 Q So June 5th, 1995?
 21 A Uh-huh.
 22 Q And so, when you look at the
 23 front page where you say 6/95, you had ordered and
 24 received as of six -- June 5th, 1995, these --
 25 A What I asked for.

Page 19

Page 21

1 GRETO
 2 Q -- right. Okay. Now, the Kenco
 3 Singles machine in White Plains, where was it kept?
 4 A In the pantry, where the
 5 refrigerator is, and the sink, and the counter is
 6 and that.
 7 Q And you may have already answered
 8 this, but who had access to that pantry?
 9 A All the employees, plus any
 10 visitors that came to visit, plus any repair men
 11 that came to visit, and in the evening, the cleaning
 12 people.
 13 Q And were the Kenco Singles
 14 cartridges out in the open?
 15 A Yes. I used to put them in a
 16 little basket, variety.
 17 Q You used to?
 18 A Yes.
 19 Q Stating the obvious, it was not --
 20 they were not in a locked drawer?
 21 A No, it was not locked.
 22 Q And they weren't -- and was there
 23 any attempt to keep the Singles cartridges secret in
 24 any way?
 25 A No.

1 GRETO
 2 Q Was the kitchen or pantry locked?
 3 A No.
 4 Q And in fact, as you said, the
 5 cleaning crew could come in at night and have access
 6 to them?
 7 A Certainly.
 8 Q Any visitors could have access?
 9 A Yes, they could.
 10 Q And in fact, all the employees?
 11 A Yes.
 12 Q And you have testified that you
 13 personally used the coffee cartridges in '94,
 14 '95, '96, '97 and '98?
 15 A Right.
 16 Q Now, when you -- at any time,
 17 during that period, '94, to '98, were you under any
 18 obligation of secrecy or confidentiality with regard
 19 to the Kraft Kenco Singles coffee cartridges?
 20 A No.
 21 Q And again, I apologize, stating
 22 the obvious. But were you under any obligation of
 23 secrecy or confidentiality with regard to those
 24 cartridges to a company called Keurig?
 25 A No.

1 GRETO
 2 Q There are two inventors named with
 3 regard to the patent in suit, a Mr. Lazarus and a
 4 Mr. Bolio. First of all, have you ever heard of
 5 these two people?
 6 A No.
 7 Q Okay, were you under any
 8 obligation of confidentiality of secrecy to these
 9 two people --
 10 A No.
 11 Q -- with regard to the Kraft
 12 cartridges?
 13 A No.
 14 Q Did you ever see others use -- you
 15 have testified that you personally used the Kraft
 16 singles cartridges for coffee. Were you under any
 17 other obligation to others -- excuse me, did you
 18 ever see others use the Kraft singles cartridges?
 19 A Yes.
 20 Q Can you identify anybody that you
 21 saw?
 22 A My co-employees, whatever area I
 23 was working in. Jennifer Guthrie, Debbie
 24 Robastelli, Bill Craig.
 25 Q Bill Craig, you saw Mr. Craig use

Page 22

Page 24

1 GRETO
 2 them?
 3 A Yes.
 4 (Whereupon Defendant's Exhibit 76
 5 - document Bates stamped K0017258 was
 6 marked for identification.)
 7 Q Ms. Greto, if you first take the
 8 time to look at Defendant's Exhibit 76, which is
 9 K0017259, and 0017258.
 10 A Yes.
 11 Q Do you see that?
 12 A Yes.
 13 Q First, at the bottom of this, it
 14 says Bill/GG. Are those your initials?
 15 A That's me.
 16 Q So did you prepare this document
 17 and sign it?
 18 A Yes.
 19 Q And did this document come out of
 20 your files?
 21 A Yes.
 22 Q It says, "Ted, I'd like to get a
 23 Michigan machine here in the United States for
 24 demonstration purposes."
 25 A Right.

1 GRETO
 2 A Yes.
 3 Q The second paragraph says, "Is
 4 there a problem with modifying this machine and
 5 sending me one in White Plains (rather than
 6 Tarrytown as previously requested)." You see that?
 7 A Yes.
 8 Q So in fact, this is the machine
 9 that we spoke about earlier. It was delivered to
 10 White Plains, not Tarrytown; is that correct?
 11 A Yes.
 12 Q Now, and I believe you just
 13 answered this. But I need to make sure. In fact,
 14 you saw -- did you ever see Mr. Craig demonstrate
 15 this machine to visitors?
 16 A I don't know if I was actually
 17 there watching him demonstrate it. But I know
 18 whoever came to visit him, he took them to the
 19 pantry, and let's have a cup of coffee. Look at
 20 this great machine.
 21 (Whereupon Defendant's Exhibit
 22 77 - document Bates stamped K0017236
 23 was marked for identification.)
 24 Q I show you Defendant's Exhibit
 25 77. Did this come out of your files?

Page 23

Page 25

1 GRETO
 2 Q Do you know what that means, "for
 3 demonstration purposes?"
 4 A We weren't going to sell or
 5 anything. We were just going to use it.
 6 Q Right, but did --
 7 A For us.
 8 Q -- did Mr. Craig demonstrate the
 9 machine and show it to visitors?
 10 A Yes.
 11 Q Now, this page it says, May 16 --
 12 excuse, me. It says the May 16, 1994 document says
 13 "How can I buy one and have it converted to run on
 14 one ten volts as a plug in unit and receive it in
 15 Tarrytown?" Do you see that?
 16 A Yes.
 17 Q Then if you turn to the next page,
 18 which is dated August 29, 1994. You see that?
 19 A Right.
 20 Q Again it says Bill/GG. Are those
 21 your initials?
 22 A Yes, it is.
 23 Q Did you prepare this document?
 24 A Yes, I did.
 25 Q Did you sign it?

1 GRETO
 2 A Yes.
 3 Q There is some handwritten notes on
 4 there. Can you identify whose handwriting that is?
 5 A That's mine.
 6 Q Can you read them and explain them
 7 to us?
 8 A "3/17 received only one box of
 9 espresso, no inside said will forward one more and
 10 two cappi ASAP." And then I wrote, "3/20 received
 11 one espresso and one cappi." This is the way I'm
 12 interpreting, and still need one more cappi. That
 13 is not what it says. But that is what I'm
 14 interpreting.
 15 Q Okay, you said it's not what is
 16 says?
 17 A Well, it's still needs.
 18 Q Yes, still need one cappi?
 19 A Still need one cappi.
 20 Q But in fact, these are your
 21 contemporaneous notes saying that on March 17th, you
 22 did receive a box of espresso; is that right?
 23 A Yes.
 24 Q And on March 20th, you received
 25 one box of espresso and one box of capuccino. Is

Page 26

Page 28

1 GRETO
2 that correct?
3 A Yes.
4 Q And then, if you go down to this
5 document, it is -- they were being sent to White
6 Plains, New York; is that correct?
7 A Yes.
8 (Whereupon Defendant's Exhibit 78
9 - document Bates stamped K0017241 was
10 marked for identification.)
11 Q Okay, I show you Defendant's
12 Exhibit 77, which is K0017262. Is this a document
13 that came out of your files?
14 A Yes.
15 Q And it is dated what?
16 A May 16th, 1995.
17 Q And it's to a Pat Nunn. Do you
18 know who Pat Nunn is?
19 A She was the secretary at Kraft,
20 Jacobs Suchard, in Banbury that I mostly or KJS,
21 whatever you want to call it. And she was kind of
22 like my contemporary. She worked for the research
23 and development person over there.
24 Q Now, it says from, and then where
25 the highlighting it, but can you --

1 GRETO
2 cartridges per bag, which equals a hundred and sixty
3 cartridges." You see that?
4 A Right.
5 Q So, that is something you counted
6 and noted?
7 A Right.
8 Q So, if you go down, and we see,
9 medium roast, it says cartons, two. So this, here
10 you're ordering two cartons; is that right?
11 A Right.
12 Q Half/bag you had forty -- you had
13 four bags in stock; is that right?
14 A Yes.
15 Q And thus you had eighty
16 cartridges; is that right?
17 A Right.
18 Q And since one carton has eight
19 bags and a hundred sixty cartridges, from this you
20 know that the users had used at least eighty of the
21 medium roast cartridges; is that correct?
22 A That's correct.
23 (Whereupon Defendant's Exhibit 79
24 - document Bates stamped K0017241 was
25 marked for identification.)

Page 27

Page 29

1 GRETO
2 A That is me because that means that
3 is my file copy. And I highlight it. One went to
4 Bill. I always put it in his thing to show him that
5 I did it.
6 Q And again, cross out says at KF
7 White Plains?
8 A Now, we became Kraft, GF to KF.
9 Q KF means Kraft Foods?
10 A Right.
11 Q And then White Plains is the
12 location?
13 A Correct.
14 Q And that is in New York State;
15 right?
16 A New York, White Plains, New York.
17 Q Now, first line of the text says,
18 "Project Michigan is a great success here. And our
19 supply is dwindling." What do you mean, our supply
20 is dwindling?
21 A Everybody loved to use that
22 machine. And we were running out of cartridges, so
23 I had to keep ordering them.
24 Q And then you have in handwriting,
25 it say, "one carton equals eight bags, equals twenty

1 GRETO
2 Q Now, this is dated May 16th,
3 1995, okay. Then I'm going to show you the next
4 document, Defendant's 79. This is also dated May
5 16th, 1995. You see at the top?
6 A Yes.
7 Q And it's from you; is that
8 correct?
9 A Yes.
10 Q Can you see decipher this for me
11 and tell me what it says?
12 A I think it's saying that this fax
13 that I sent, this as the cover sheet, didn't go
14 through. I kept having a problem.
15 Q Okay?
16 A Try again.
17 Q So you -- the fax that you had
18 tried to send for Defendant's Exhibit 77, hadn't
19 gone through; right?
20 A That's what this says, yes.
21 Q So then, now I take it from that,
22 you monitored. You didn't just send these things.
23 You monitored if they went through, et cetera; is
24 that right?
25 A I always followed up, yes.

Exhibit 2

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF DELAWARE

-----X

3 KEURIG, INC.,

4 Plaintiff,

5 - against -

6 KRAFT FOODS GLOBAL, TASSIMO CORPORATION,
7 KRAFT FOODS INTERNATIONAL,

7

Defendants.

8

C.A. NO. 07-17 GMS

9 -----X

10

11 120 Park Avenue
New York, New York

12

13

March 4, 2008

14

2:00 P.M.

15

16 Examination Before Trial of HELEN GLUS,
17 pursuant to Notice, taken by and before Renee
18 S. Harris, a Notary Public and Shorthand
19 Reporter of the State of New York.

20

21

22

23 ELLEN GRAUER COURT REPORTING CO. LLC
126 East 56th Street, Fifth Floor
24 New York, New York 10022

212-750-6434

25

REF: 86800

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<p>1 APPEARANCES:</p> <p>2</p> <p>3 BAKER BOTTS</p> <p>4 Attorneys for Defendants</p> <p>5 1299 Pennsylvania Ave, NW</p> <p>6 Washington, DC 20004</p> <p>7 BY: DAVID M. SCHLITZ, ESQ.</p> <p>8</p> <p>9</p> <p>10 WOLF GREENFIELD</p> <p>11 Attorneys for Plaintiffs</p> <p>12 600 Atlantic Avenue</p> <p>13 Boston, Massachusetts 02210</p> <p>14 BY: GERALD HRYCYSZYN, ESQ.</p> <p>15 ALSO PRESENT: CLINTON HALLMAN, KRAFT</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 ----- EXHIBITS (Cont'd) -----</p> <p>2 DEFENDANT'S DESCRIPTION PAGE</p> <p>3 Exhibit 68 K0017187 45</p> <p>4 Exhibit 69 K0017186 46</p> <p>5 Exhibit 70 K0017189 47</p> <p>6 Exhibit 71 K0017182 49</p> <p>7 Exhibit 72 K0017181 50</p> <p>8 Exhibit 73 K0017180 51</p> <p>9 PLAINTIFF'S PAGE</p> <p>10 Exhibit 101 Coffee pack 63</p> <p>11 Exhibit 102 K0017210 66</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 ----- INDEX -----</p> <p>2 WITNESS EXAMINATION BY PAGE</p> <p>3 HELEN GLUS MR. SCHLITZ 6</p> <p>4</p> <p>5</p> <p>6 ----- EXHIBITS -----</p> <p>7 DEFENDANT'S DESCRIPTION PAGE</p> <p>8 Exhibit 50 K001722-23 18</p> <p>9 Exhibit 51 K001721 20</p> <p>10 Exhibit 52 K0017219 20</p> <p>11 Exhibit 53 K0017218 24</p> <p>12 Exhibit 54 K0017217 26</p> <p>13 Exhibit 55 K0017216 26</p> <p>14 Exhibit 56 K0017214 29</p> <p>15 Exhibit 57 K0017212 30</p> <p>16 Exhibit 58 K0017204 32</p> <p>17 Exhibit 59 K0017202 33</p> <p>18 Exhibit 60 K0017203 34</p> <p>19 Exhibit 61 K0017201 37</p> <p>20 Exhibit 62 K0017199 37</p> <p>21 Exhibit 63 K0017200 37</p> <p>22 Exhibit 64 K0017197 39</p> <p>23 Exhibit 65 K0017191 41</p> <p>24 Exhibit 66 K0017196 42</p> <p>25 Exhibit 67 K0017192 43</p>	<p>1 STIPULATIONS</p> <p>2</p> <p>3 IT IS HEREBY STIPULATED AND AGREED</p> <p>4 by and between the attorneys for the</p> <p>5 respective parties herein, that filing,</p> <p>6 sealing and certification be and the</p> <p>7 same are hereby waived.</p> <p>8 IT IS FURTHER STIPULATED AND</p> <p>9 AGREED that all objections, except as to</p> <p>10 the form of the question, shall be</p> <p>11 reserved to the time of the trial.</p> <p>12 IT IS FURTHER STIPULATED AND</p> <p>13 AGREED that the within deposition may be</p> <p>14 signed and sworn to before any officer</p> <p>15 authorized to administer an oath, with</p> <p>16 the same force and effect as if signed</p> <p>17 and sworn to before the Court.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

Page 6

1 HELEN GLUS, having first been duly
2 sworn by a Notary Public for and within the
3 State of New York, upon being examined,
4 testified as follows:

5
6 EXAMINATION BY
7 MR. SCHLITZ:

8 Q. Please state your name for the
9 record.

10 A. Helen Glus. 123 Mamaroneck Avenue,
11 Mamaroneck, New York, 10543.

12 Q. I'm going to have to ask you to
13 speak up a little bit so we can all hear.

14 Mrs. Glus, who do you currently work
15 for?

16 A. Louis Camilleri, chairman and CEO of
17 Altria Group, Inc.

18 Q. Did you ever work for Kraft Foods?

19 A. Yes, the international division.

20 Q. Okay. And can you tell me the dates
21 that you worked for Kraft Foods?

22 A. Mr. Camilleri was transferred there
23 on December '95, and we stayed there till
24 August '96.

25 Q. And you say "there"; where is there?

Page 7

1 GLUS

2 A. The Rye Brook office of Kraft Foods
3 International.

4 Q. And is that in New York State?

5 A. Westchester.

6 Q. Westchester, New York State?

7 A. Mm-hmm.

8 Q. And when you arrived at the offices
9 of Kraft Foods International Rye Brook, was
10 there a single-serve beverage machine there?

11 A. Yes, there was.

12 Q. Do you know what brand it was?

13 A. We referred to it as the Kenco
14 machine.

15 Q. Where was the Kenco machine that
16 you're referring to, where was that in the
17 building?

18 A. On the seventh -- on my half of the
19 seventh floor in the kitchen.

20 Q. Who had access to that machine?

21 A. Everyone.

22 Q. Everyone, meaning?

23 A. Everyone who worked on that floor
24 who came to that floor, visited that floor.

25 Q. Now did you personally have access

Page 8

1 GLUS

2 to it?

3 A. Yes.

4 Q. We've talked about there was a Kenco
5 singles machine. Were there capsules for use
6 with the Kenco singles machine at the same
7 location?

8 A. Yes.

9 Q. Did you personally use those Kenco
10 singles capsules?

11 A. Yes.

12 Q. How often did you use them?

13 A. Every day, seven times a day, at
14 least three times a day.

15 Q. And you mentioned that you arrived
16 in December '95, there already was a machine;
17 and did you start using it in December of
18 '95?

19 A. Yes.

20 Q. And did you continue to use it
21 through August '96?

22 A. Yes.

23 Q. Let me ask the question first, and
24 wait if you would, please.

25 Did you ever see anyone else use the

Page 9

1 GLUS

2 Kenco singles capsules?

3 A. Yes.

4 Q. Now I'm going to ask you to dig way
5 back, and I appreciate we're talking about
6 December '95. But do you remember the
7 flavors of beverage that you used of the
8 singles -- of the Kenco's singles cartridges
9 that you used?

10 A. Tea, medium roast. Those are the
11 two I used.

12 Q. Okay. And again, I understand it's
13 been a while, but can you describe the
14 appearance of the Kenco's singles cartridge
15 that you started to use in December of 1995?

16 A. Can I use my hands?

17 Q. Yes.

18 A. It's about that long, about that
19 wide, square (indicating). I don't remember
20 if the top, the part that you inserted, was
21 more rounded or maybe came more to a point.
22 Each one had a different label on the front
23 for what the product was.

24 Q. And do you remember what the bottom
25 looked like?

Page 10

Page 12

1 GLUS
 2 A. The foil, but that's all I remember.
 3 Q. And recently, have you seen the
 4 Kenco's singles cartridge?
 5 A. Yes.
 6 Q. How recently?
 7 A. A month ago.
 8 Q. And was there any difference in the
 9 appearance of what you saw a month ago from
 10 what you --
 11 A. To me they looked exactly the same.
 12 Q. When you say "they," meaning what
 13 you started to use in December '95?
 14 A. Yes.
 15 Q. Now, with regard to the Kenco's
 16 singles cartridges that you were using from
 17 December 1995 to August 1996, in Rye Brook --
 18 we're going to separate the two times: One
 19 is Rye Brook and one is here in Park Avenue.
 20 Were you under any obligation of
 21 confidentiality or secrecy with anyone with
 22 regard to the Kenco's singles cartridges?
 23 A. No.
 24 Q. To your knowledge were the other
 25 uses under any obligation of confidentiality

1 GLUS
 2 A. No.
 3 Q. Thereafter, was there a Kenco's
 4 single machine?
 5 A. Yes.
 6 Q. Do you know how soon thereafter?
 7 A. Within months.
 8 Q. Okay. And were you responsible for
 9 ordering that machine?
 10 A. I was in the loop, but I believe it
 11 was a phone call between my boss and I
 12 believe Ronny Bell, but he told him that he
 13 wanted a machine shipped here.
 14 Q. And when the machine arrived, did
 15 there also arrive Kenco's singles cartridges
 16 for use in the machine?
 17 A. Yes, there was an initial supply
 18 delivery.
 19 Q. Where was that machine located?
 20 A. In the kitchen area on this floor.
 21 Q. "This floor" being --
 22 A. The 22nd floor.
 23 Q. The 22nd floor. That kitchen area,
 24 who had access to it?
 25 A. Everybody -- everybody. It's for

Page 11

Page 13

1 GLUS
 2 or secrecy to anyone with regard to the
 3 Kenco's singles cartridges?
 4 A. No.
 5 Q. More specifically, were you under
 6 any obligation of confidentiality or secrecy
 7 to a company called Keurig, the inventor,
 8 employees of Keurig?
 9 A. No.
 10 Q. Were you free to show the cartridges
 11 to anyone you wanted to show them to?
 12 A. Yes.
 13 Q. Now, after August 1996, did you
 14 change companies that you worked for?
 15 A. Yes, Mr. Camilleri was given a new
 16 position, senior vice president and chief
 17 financial officer for Philip Morris
 18 Companies, Inc., so we moved back to 120
 19 Park.
 20 Q. And when you moved back -- when was
 21 that?
 22 A. If I can look, August '96.
 23 Q. In August '96, when you arrived at
 24 120 Park Avenue, on the floor that you worked
 25 on, was there a Kenco's singles machine?

1 GLUS
 2 the purpose of the people on this floor, but
 3 for everybody who came on the floor.
 4 Q. That would be other employees of
 5 Kraft in the building -- excuse me, of
 6 employers in the building?
 7 A. Yes.
 8 Q. Visitors to the building?
 9 A. Yes.
 10 Q. And I asked you about the machine,
 11 were there capsules, Kenco's singles
 12 capsules, for use within that machine in the
 13 same location?
 14 A. Yes.
 15 Q. And were they out in public view?
 16 A. Yes, they were in a storage kind of
 17 view.
 18 Q. Okay. Now, in 1996, did you ever
 19 personally use the Kenco's singles capsules?
 20 A. Yes.
 21 Q. Again, how often?
 22 A. At least three times a day.
 23 Q. In 1997, did you use the Kenco's
 24 singles capsules?
 25 A. Yes.

Page 14

Page 16

1 GLUS
 2 Q. In 1998?
 3 A. Yes.
 4 Q. And in 1999?
 5 A. Yes.
 6 Q. Now, did you ever see others use the
 7 Kenco's singles cartridges in 1996?
 8 A. Yes.
 9 Q. In 1997?
 10 A. Yes.
 11 Q. In 1998?
 12 A. Yes.
 13 Q. In 1999?
 14 A. Yes.
 15 Q. And can you -- and I know this is a
 16 difficult question, but can you remember
 17 anybody that else that used them?
 18 A. All my coworkers on the floor at the
 19 time, definitely. Other people who would
 20 come up for meetings, outsiders who came for
 21 meetings. Everybody used it.
 22 Q. When you say "outsiders" that came
 23 to meetings, to your knowledge did any
 24 visitors, non-Kraft employees, ever view and
 25 use the Kenco's singles machine?

Page 15

Page 17

1 GLUS
 2 A. Yes.
 3 Q. Can you describe under which
 4 circumstances that might have happened?
 5 A. Well, they would visit Mr.
 6 Camilleri. If you knew the layout of the
 7 floor, Mr. Camilleri's office at the time was
 8 by the kitchen, and his conference room was
 9 opposite the kitchen.
 10 So if people were there to meet with him
 11 and he wasn't available, I would say: Do you
 12 want to go to conference room; would you like
 13 coffee; we would go along the way. We had
 14 such a variety, so you would ask them what
 15 they want.
 16 Q. Now, we talked about each of the
 17 years '97, '98, '99, your personal use of the
 18 Kenco's singles capsules, do you remember
 19 what flavors you used?
 20 A. I used medium roast or regular tea.
 21 Q. Now, at any time in '96, '97, '98,
 22 '99, were you under any obligation of
 23 confidentiality or secrecy with regard to the
 24 Kenco's singles cartridges and the use of
 25 them?

1 GLUS
 2 A. No.
 3 Q. Did anyone ever say to you: Helen,
 4 you're free to use these cartridges, but you
 5 can't tell anybody about the cartridges?
 6 A. No.
 7 Q. Were your coworkers under any
 8 obligation of confidentiality or secrecy with
 9 regard to the use of Kenco's singles?
 10 A. No.
 11 Q. This may seem obvious, but were you
 12 under any obligation of confidentiality or
 13 secrecy with regard to the Kenco's singles
 14 cartridges -- did you have any obligation of
 15 confidentiality or secrecy to Keurig?
 16 A. No.
 17 Q. Did you have any obligation of
 18 confidentiality or secrecy to a Mr. Lazarus,
 19 who is one of the inventors of the patent
 20 suit?
 21 A. No.
 22 Q. What about to his co-inventor?
 23 A. I don't know who these people are,
 24 no.
 25 Q. But you didn't have any obligation

1 GLUS
 2 of confidentiality or secrecy?
 3 A. No.
 4 Q. Now did there come a time when you
 5 were responsible for ordering the Kenco's
 6 singles cartridges for use in the machine on
 7 the 22nd floor?
 8 A. Yes.
 9 Q. Okay. Now did you keep a file with
 10 regard to those orders?
 11 A. Yes.
 12 Q. And where did you keep that file?
 13 A. In my desk drawer.
 14 Q. Did you provide copies of the
 15 documents in that file to Kraft's attorneys
 16 in this case to be produced in this case?
 17 A. Yes.
 18 Q. Okay. I'm going to show you some
 19 documents, if you would please hand this to
 20 the court reporter. Now,
 21 I don't know what the last defense
 22 exhibit is in Banbury, but I know it was
 23 certainly not up to 50.
 24 So let's mark this defendant's exhibit
 25 50.

Page 18

GLUS

(A DOCUMENT WAS RECEIVED AND MARKED
DEFENDANT'S EXHIBIT 50,
IN EVIDENCE, AS OF THIS DATE.)

Q. Can you take a second to look at the
document?

A. Yes.

Q. Can you describe what this document
is?

A. It's a fax to me from Mr. Halliday
just saying how happy we were with the
machine and asking for more boxes of product.

Q. Now, first of all, did this document
come out of your file?

A. Yes, it did.

Q. At the top there is a Philip Morris
letterhead. Is this the letterhead that
you --

A. At the time it was my standard fax
cover sheet.

Q. Okay. And this is dated November 6,
1996; is that right?

A. That's right.

Q. Do you have any reason to believe
this was not sent about November 6, 1996?

Page 20

GLUS

said, we got an initial supply, but it was
going like crazy. So I had to reorder more
stock.

Q. When you say were "going like
crazy," what do you mean, going like crazy?

A. People were using it all day long.

Q. Now, it says: "I'd appreciate it if
you could arrange for the following favorites
to be sent to us on 120 Park Avenue." And
you list Kenco traditional leaf tee, Kenco
medium roast, Kenco's espresso. Were these
the favorite flavors?

A. At the time they were the favorites,
the bestest-selling.

(A DOCUMENT WAS RECEIVED AND MARKED
DEFENDANT'S EXHIBIT 51,
IN EVIDENCE, AS OF THIS DATE.)

Q. Okay. Now I'm going to show you a
next document, Defendant's Exhibit 51. At
the bottom right-hand corner, litigation
number we call Bates Nos. 2321; what is this
document?

A. This appears to me to be a letter
from Liz Matthews saying she is sending the

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GLUS

A. It was sent.

Q. Okay. Now, you say it was sent.
Now you look at the next page, K0017223; what
is this page?

A. That's the transmission report from
the fax machine.

Q. So this show that is it was --

A. That it went through; that the
transmission was okay.

Q. Now, looking at the message itself,
it says, "Dear Mr. Halliday, I don't know if
Lewis mentioned it in his phone call, but the
machine is a big success."

What do you mean, a big success?

A. That everyone on the machine thought
it was the greatest thing since sliced bread.

Q. "Everyone on the machine," everyone
on the --

A. Everyone on the floor.

Q. "So much so that we are ready to
re-order certain items after a short time."

What do you mean reorder certain items
after a short time?

A. Well, I believe it came -- as I

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GLUS

product along with the capsule storage unit
and that she would let me know when the
products were going to arrive and to let her
know when I needed more.

Q. And this is dated November 7, 1996;
is that correct?

A. That's correct.

Q. Which if you look at Defendant's
Exhibit 50 is one day after you requested the
product; is that correct?

A. Yes.

Q. And this facsimile is addressed to
you; is that correct?

A. That's correct.

Q. And did this facsimile come out of
your files?

A. Yes, it did.

Q. Now, when you made orders, did you
stay on top of whether they are delivered or
not?

A. I tried to.

Q. And if you made an order and it
didn't come, did you do anything?

A. I'm sure I would have e-mailed them

<p style="text-align: right;">Page 22</p> <p>1 GLUS</p> <p>2 or called them.</p> <p>3 Q. So you have no reason to believe</p> <p>4 that this wasn't --</p> <p>5 A. Well, I know it came because I would</p> <p>6 have had a lot of people to answer to if it</p> <p>7 didn't. So I know when I ordered, I got a</p> <p>8 product.</p> <p>9 (A DOCUMENT WAS RECEIVED AND MARKED</p> <p>10 DEFENDANT'S EXHIBIT 52,</p> <p>11 IN EVIDENCE, AS OF THIS DATE.)</p> <p>12 Q. Now, handing you -- if you would</p> <p>13 look at Defendant's Exhibit 52 which is</p> <p>14 K0017219 through K0017220, would you tell me</p> <p>15 what these documents are?</p> <p>16 A. Again another fax to Ms. Matthews</p> <p>17 asking for more product.</p> <p>18 As I said, the earlier one where we had</p> <p>19 just those three items, the choices expanded.</p> <p>20 So we needed more, another cartridge, another</p> <p>21 storage unit to hold all the cartridges, so I</p> <p>22 asked for another one of those. And then</p> <p>23 there was a question about billing that</p> <p>24 Mr. Kepler had.</p> <p>25 Q. Now it says here: "I was told it</p>	<p style="text-align: right;">Page 24</p> <p>1 GLUS</p> <p>2 didn't have enough.</p> <p>3 Q. When you say "we were running out,"</p> <p>4 would people have used -- when you look at</p> <p>5 the previous exhibit, which is dated November</p> <p>6 6, 1996, you had ordered nine boxes of</p> <p>7 cartridges.</p> <p>8 A. Right.</p> <p>9 Q. Now, this is three months later,</p> <p>10 February 4, 1996; so almost three months</p> <p>11 later.</p> <p>12 Had people been using the cartridges and</p> <p>13 the nine boxes that you had received?</p> <p>14 A. Yes.</p> <p>15 Q. Here you are requesting 16 more</p> <p>16 boxes; is that correct?</p> <p>17 A. That's right.</p> <p>18 (A DOCUMENT WAS RECEIVED AND MARKED</p> <p>19 DEFENDANT'S EXHIBIT 53,</p> <p>20 IN EVIDENCE, AS OF THIS DATE.)</p> <p>21 Q. Show you Defendant's Exhibit 53,</p> <p>22 K0017218, can you tell me what this is?</p> <p>23 A. This is Liz's reply to me from the</p> <p>24 previous exhibit saying that the arrangements</p> <p>25 for the product and the storage unit were</p>
<p style="text-align: right;">Page 23</p> <p>1 GLUS</p> <p>2 might be helpful for you to indicate on the</p> <p>3 shipping documents and the name and phone</p> <p>4 number of our broker, which is Martin</p> <p>5 Strauss."</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Is that correct that you were the</p> <p>9 international broker for bringing things into</p> <p>10 customs to Martin Strauss?</p> <p>11 A. Yes, it was.</p> <p>12 Q. Now, the next page which is 220,</p> <p>13 what is this?</p> <p>14 A. Again, it's a fax transmission</p> <p>15 sheet.</p> <p>16 Q. Now, where you say: "Dear Liz," and</p> <p>17 it says, "it's that time again."</p> <p>18 What do you mean, "it's that time</p> <p>19 again?"</p> <p>20 A. I always took -- time for me to be a</p> <p>21 pest and order more product.</p> <p>22 Q. And again, I apologize. It may seem</p> <p>23 obvious, but why are you ordering more</p> <p>24 product?</p> <p>25 A. Because we were running out and we</p>	<p style="text-align: right;">Page 25</p> <p>1 GLUS</p> <p>2 being made; two of them were out of stock;</p> <p>3 and that we weren't going to be billed.</p> <p>4 Q. Okay. So it says: "We are making</p> <p>5 arrangements for the product and capsules of</p> <p>6 the storage unit to be sent to you. There</p> <p>7 may be some delay in getting the carte</p> <p>8 noire," c-a-r-t-e, and then n-o-i-r-e, and</p> <p>9 then the Kronung, K-r-o-n-u-n-g, products.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Now, if you look at the dates,</p> <p>13 Defendant's Exhibit 52 and Defendant's</p> <p>14 Exhibit 53. Defendant's Exhibit 52 where</p> <p>15 you've ordered the 16 boxes dated February 4,</p> <p>16 1997, and this is dated, what?</p> <p>17 A. February 5, 1997.</p> <p>18 Q. So a day later?</p> <p>19 A. Yes.</p> <p>20 Q. So you ordered them on February 4</p> <p>21 and you got a reply on February 5, that they</p> <p>22 were being sent to you?</p> <p>23 A. Yes.</p> <p>24 (A DOCUMENT WAS RECEIVED AND MARKED</p> <p>25 DEFENDANT'S EXHIBIT 54,</p>

<p style="text-align: right;">Page 26</p> <p>1 GLUS</p> <p>2 IN EVIDENCE, AS OF THIS DATE.)</p> <p>3 Q. Can you tell me what this is,</p> <p>4 Defendant's Exhibit 54, which is K0017217;</p> <p>5 what is this document?</p> <p>6 A. It's a fax from Liz Matthews telling</p> <p>7 me that the products listed were being sent</p> <p>8 to me on February 15; plus the capsule</p> <p>9 storage unit and the flight details and the</p> <p>10 other two products were going to be produced</p> <p>11 and dispatched the following week.</p> <p>12 Q. Okay. And did this document come</p> <p>13 from your files?</p> <p>14 A. Yes, it did.</p> <p>15 (A DOCUMENT WAS RECEIVED AND MARKED</p> <p>16 DEFENDANT'S EXHIBIT 55,</p> <p>17 IN EVIDENCE, AS OF THIS DATE.)</p> <p>18 Q. Please look at Defendant's Exhibit</p> <p>19 55 which is K0017216. Do you see that?</p> <p>20 A. Yes, I do.</p> <p>21 Q. First of all, did this document come</p> <p>22 from your files?</p> <p>23 A. Yes, it did.</p> <p>24 Q. Can you tell me what this document</p> <p>25 is?</p>	<p style="text-align: right;">Page 28</p> <p>1 GLUS</p> <p>2 two boxes of dark roast, and you see on</p> <p>3 Defendant's Exhibit 55, it says dark roast</p> <p>4 coffee; what is the quantity?</p> <p>5 A. Two.</p> <p>6 Q. And then on Defendant's Exhibit 54,</p> <p>7 it says two boxes of traditional tea, and on</p> <p>8 Defendant's Exhibit 55, it says traditional</p> <p>9 tea; how many, the quantity?</p> <p>10 A. Two.</p> <p>11 Q. And then on defendant's 54, it says</p> <p>12 two boxes of earl gray tea, and then on</p> <p>13 Defendant's Exhibit 55, it says earl gray</p> <p>14 tea; what quantity?</p> <p>15 A. Two.</p> <p>16 Q. Then we go to cappuccino, three</p> <p>17 boxes; and boxes of cappuccino and on</p> <p>18 Defendant's Exhibit 55, we have how many</p> <p>19 boxes?</p> <p>20 A. Three.</p> <p>21 Q. Defendant's Exhibit 54, we have two</p> <p>22 boxes of espresso; and Defendant's Exhibit</p> <p>23 55, we have espresso, how many?</p> <p>24 A. Two.</p> <p>25 (A DOCUMENT WAS RECEIVED AND MARKED</p>
<p style="text-align: right;">Page 27</p> <p>1 GLUS</p> <p>2 A. I don't really know what officially</p> <p>3 this document is called. I don't know if</p> <p>4 it's a bill of lading or an invoice; I don't</p> <p>5 know.</p> <p>6 Q. If you look at the date, it is dated</p> <p>7 February 13, 1997; is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. And if you look at the date of the</p> <p>10 previous exhibit, Defendant's Exhibit 54,</p> <p>11 that's likewise dated February 13, 1997; is</p> <p>12 that correct?</p> <p>13 A. Yes.</p> <p>14 Q. Now, if you look at the previous</p> <p>15 exhibit, it has one box of medium -- it says:</p> <p>16 "The following product is being dispatched</p> <p>17 from the U.K. on Saturday, 15 February." It</p> <p>18 says one box of medium roast; do you see</p> <p>19 that?</p> <p>20 A. Yes.</p> <p>21 Q. From Defendant's Exhibit 55, do you</p> <p>22 see medium roast coffee, quantity, what is</p> <p>23 that?</p> <p>24 A. One.</p> <p>25 Q. And on Defense Exhibit 51, it says</p>	<p style="text-align: right;">Page 29</p> <p>1 GLUS</p> <p>2 DEFENDANT'S EXHIBIT 56,</p> <p>3 IN EVIDENCE, AS OF THIS DATE.)</p> <p>4 Q. Now, show you Defendant's Exhibit</p> <p>5 56, which is K0017214.</p> <p>6 Do you have that in front of you?</p> <p>7 A. Yes.</p> <p>8 Q. Did this come out of your files?</p> <p>9 A. Yes.</p> <p>10 Q. Now, is this addressed to you?</p> <p>11 A. Yes.</p> <p>12 Q. And this is dated March 10, 1997; is</p> <p>13 that correct?</p> <p>14 A. Yes.</p> <p>15 Q. And it is a bill for two types of</p> <p>16 Kenco singles cartridges; can you read what</p> <p>17 they are?</p> <p>18 A. French dark coffee and Kronung.</p> <p>19 Q. Now, if you look, go back to</p> <p>20 Defendant's Exhibit 54 -- excuse me. Just go</p> <p>21 back to Defendant's Exhibit 52, the bottom of</p> <p>22 the list of order, you have two boxes of</p> <p>23 carte noire?</p> <p>24 A. Yes.</p> <p>25 Q. And two boxes of Kronung; is that</p>

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Page 32

1 GLUS
 2 right?
 3 A. Yes.
 4 Q. Now, if you then go to Defendant's
 5 Exhibit 54, can you tell us what Ms. Matthews
 6 told you in this document?
 7 A. That they were being produced
 8 tomorrow, the 14th of February, and that they
 9 will be dispatched by DHL early the next
 10 week.
 11 Q. So now going to Defendant's Exhibit
 12 56, does this reflect that those two flavors
 13 were dispatched to you?
 14 A. Yes.
 15 (A DOCUMENT WAS RECEIVED AND MARKED
 16 DEFENDANT'S EXHIBIT 57,
 17 IN EVIDENCE, AS OF THIS DATE.)
 18 Q. Now, I'm going to show you
 19 Defendant's Exhibit 57, which is K0017212.
 20 And can you tell me what -- first, did this
 21 document come from your files?
 22 A. Yes.
 23 Q. And midway about a third down, it
 24 says: "Attention, Helen Glus."
 25 Do you see that?

1 GLUS
 2 Q. And to whose attention?
 3 A. Mine.
 4 (A DOCUMENT WAS RECEIVED AND MARKED
 5 DEFENDANT'S EXHIBIT 58,
 6 IN EVIDENCE, AS OF THIS DATE.)
 7 Q. Now, I show you Defendant's Exhibit
 8 58, which is K0017204, through K0017206.
 9 A. Okay.
 10 Q. Can you tell us me, first of all,
 11 did this document come out of your files?
 12 A. Yes.
 13 Q. Now below it says: "Kind regards,
 14 Helen." Is that you?
 15 A. Yes.
 16 Q. So did you send this?
 17 A. Yes, I did.
 18 Q. And what is this document?
 19 A. Another request for product.
 20 Q. Okay. If you would look back to
 21 Defendant's Exhibit 54 -- excuse me,
 22 Defendant's Exhibit 52, it's dated February
 23 4, 1997, and you said there were 16 boxes
 24 ordered; correct?
 25 A. Yes.

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Page 33

1 GLUS
 2 A. Yes.
 3 Q. Is that you?
 4 A. Yes.
 5 Q. Okay. At the top, it says: "Martin
 6 Strauss, Air Freight Corp.," do you see that?
 7 A. Yes.
 8 Q. Do you know who Martin Strauss, Air
 9 Freight Corp. is?
 10 A. It was our broker.
 11 Q. And do you know what this document
 12 is?
 13 A. I want to say like the bill of
 14 lading, but I'm not really positive.
 15 Q. Okay. But if you see, if you go
 16 back and look at Exhibit 54, do you see that?
 17 A. Yes.
 18 Q. And it says flight details as
 19 follows, and it has the -- what airline is
 20 this being sent on?
 21 A. United.
 22 Q. And this bill of lading from Martin
 23 Strauss Air Freight, what airline was this
 24 being sent on?
 25 A. United.

1 GLUS
 2 Q. Okay. This is roughly a little over
 3 three months later, what's the date of this?
 4 A. Yes.
 5 Q. No. What is the date?
 6 A. May 13th.
 7 Q. And May 13th, you were ordering 18
 8 more boxes; is that correct?
 9 A. Yes.
 10 Q. Why would you have ordered 18 boxes
 11 of capsules three months later?
 12 A. Because our supply was running low.
 13 Q. And when you say your supply was
 14 running low, is that because people were
 15 using them?
 16 A. Yes.
 17 Q. Including yourself?
 18 A. Absolutely.
 19 (A DOCUMENT WAS RECEIVED AND MARKED
 20 DEFENDANT'S EXHIBIT 59,
 21 IN EVIDENCE, AS OF THIS DATE.)
 22 Q. If you look at Defendant's Exhibit
 23 59, which is K0017202, first of all, did this
 24 document come from your files?
 25 A. Yes.

Exhibit 3

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Page 1

1
2
3 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

4
5 KEURIG INCORPORATED :
6 Plaintiff : Civil Action No.
7 v : 07-017 GMS
8 KRAFT FOODS GLOBAL, INC :
9 TASSIMO CORPORATION, and :
KRAFT FOODS INC, :
Defendants :
:

10
11 VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION
12 OF
13 JANICE APPLETON
14 On Thursday, 21st February 2008
15

Commencing at 9.12 am

16
17 Taken at:
Best Western Banbury House Hotel
Oxford Road
18 Banbury
Oxfordshire
19 OX16 9AH
United Kingdom

20
21
22
23
24 Reported by: Miss Pamela Henley
25

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Page 2	Page 4
<p>1 2 APPEARANCES 3 4 5 6 On behalf of the Plaintiff: 7 Wolf, Greenfield & Sacks, PC 8 600 Atlantic Avenue 9 Boston, MA 02210 10 BY: Michael N Rader 11 12 On behalf of the Defendants: 13 Baker Botts LLP 14 The Warner 15 1299 Pennsylvania Avenue 16 NW Washington, DC 2004-2400 17 BY: DAVID SCHLITZ 18 19 Court Reporter: 20 21 Pamela Henley 22 Marten Walsh Cherer Limited 23 6th Floor 24 12-14 New Fetter Lane 25 London EC4A 1LT</p>	<p>1 Confidential - Attorneys' Eyes Only 2 JANICE APPLETON 3 having been duly sworn 4 was examined and did testify as follows 5 DIRECT EXAMINATION: 6 BY MR RADER: Good morning, Ms Appleton. My name 7 is Mike Rader and we met briefly off the record. 8 Just a couple of preliminaries before I ask you 9 some questions; have you ever had your deposition 10 taken before? 11 A. No. 12 Q. A couple of preliminaries then. 13 First, I think you know this, but I will just need 14 to ask you to make sure you answer all my 15 questions verbally rather than, for example, 16 nodding your head so that the court reporter can 17 get down your answers, okay? 18 A. Yes. 19 Q. Now, Mr Schlitz probably told you 20 this, but I want to make sure you understand, if 21 he objects to a question that I ask you unless he 22 for some reason instructs you not to answer it do 23 you understand that notwithstanding the objection 24 you will still need to provide a response? 25 A. I do.</p>
Page 3	Page 5
<p>1 2 INDEX 3 DEPONENT 4 Janice Appleton 5 Examination: Page No: 6 Direct Examination by Mr Rader 4 7 8 EXHIBIT INDEX 9 10 Number Page No: 11 1 23 12 2 62 13 3 64 14 4 66 15 Defendant's 16 1 81 17 18 19 20 21 22 23 24 25</p>	<p>1 Confidential - Attorneys' Eyes Only 2 Q. Okay. And last if at any point you 3 need to take a break, run to the bathroom or get 4 something to drink will you let me know? 5 A. Yes, I will. 6 Q. Are you feeling all right today and 7 ready and prepared to give your best testimony? 8 A. Yes, I am fine, thank you. 9 Q. I do not expect this to take too 10 long, I think an hour or maybe two should be 11 enough. 12 Ms Appleton, are you a current 13 Kraft employee? 14 A. Yes, I am. 15 Q. At what Kraft facility do you work? 16 A. I work in the Banbury office of 17 Kraft. 18 Q. What is the full name of your 19 employers? Is it just Kraft or is it some other 20 name? 21 A. Just Kraft Foods. 22 Q. How long have you worked at Kraft 23 Foods? 24 A. 20 years permanently and nearly 21 25 because I worked nine months as a temporary</p>

2 (Pages 2 to 5)

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<p style="text-align: right;">Page 22</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 Q. You mentioned that you had some</p> <p>3 responsibility, again we are still on the</p> <p>4 purchasing of the system rolls, you mentioned you</p> <p>5 had some responsibility in the distribution or</p> <p>6 shipping area; is that of the singles machines?</p> <p>7 A. Yes.</p> <p>8 Q. And not the cartridges?</p> <p>9 A. We tended to utilise as far as</p> <p>10 France, Germany and Spain were concerned if we did</p> <p>11 not have full truck loads they would either put</p> <p>12 the request to ship the equipment if that was not</p> <p>13 a full trip load, I would ask them to utilise with</p> <p>14 product if they had any to shift.</p> <p>15 Q. By "product" you mean the</p> <p>16 cartridges?</p> <p>17 A. Yes.</p> <p>18 Q. Then would you then actually</p> <p>19 co-ordinate them getting the product? Did your</p> <p>20 role extend any further beyond that in terms of</p> <p>21 the cartridges?</p> <p>22 A. Not as far as France, Germany and</p> <p>23 Spain.</p> <p>24 Q. What about any other countries?</p> <p>25 A. The USA.</p>	<p style="text-align: right;">Page 24</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 Ms Appleton, you have Exhibit 1 in front of you</p> <p>3 and I will just point out what we call litigation</p> <p>4 numbers or Bates numbers in the lower right-hand</p> <p>5 corner from K17156 through K17171</p> <p>6 MR SCHLITZ: Excuse me, I object.</p> <p>7 This is a compilation of documents that were</p> <p>8 provided. This is not a single document.</p> <p>9 MR RADER: Correct. It is a</p> <p>10 compilation.</p> <p>11 MR SCHLITZ: So you are making this</p> <p>12 as an exhibit a compilation?</p> <p>13 MR RADER: Yes.</p> <p>14 MR SCHLITZ: I want it to be</p> <p>15 understood that some of these documents may not be</p> <p>16 whole. Some of them -- the way that she kept them</p> <p>17 in her files. We provided to you stapled the way</p> <p>18 they were kept in the files.</p> <p>19 MR RADER: Just for your</p> <p>20 information, Mr Schlitz, the reason I chose this</p> <p>21 group is because by e-mail dated February 14th,</p> <p>22 2008 your colleague, Mr Foster, represented to us</p> <p>23 that this specific group of documents came from</p> <p>24 Ms Appleton's files, and I want to ask her about</p> <p>25 that. Rather than marking every single page. I</p>
<p style="text-align: right;">Page 23</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 Q. What was your role with regard to</p> <p>3 singles cartridges in the US?</p> <p>4 A. Reference some of the documents it</p> <p>5 came through the vending director's secretary, a</p> <p>6 request for me to ship some product.</p> <p>7 Q. Was that a regular part of your job</p> <p>8 or just something that you did to help her out?</p> <p>9 A. I suppose it was not within the</p> <p>10 normal procedure, so it was -- I would not say it</p> <p>11 was not my job to do it, but I would not say it</p> <p>12 was the normal way that we shipped product coming</p> <p>13 through me.</p> <p>14 Q. My understanding from reviewing the</p> <p>15 documents, and I will put them in front of you in</p> <p>16 a second, but my understanding is that when you</p> <p>17 made those shipments to the US there was no</p> <p>18 payments in return for those; is that right?</p> <p>19 A. I think some of them were free of</p> <p>20 charge. I am not quite sure if all of them were.</p> <p>21 Q. We will look at those in</p> <p>22 particular. Let us start doing that now actually.</p> <p>23 I am going to ask the court reporter to mark this</p> <p>24 as Plaintiff's Exhibit 1.</p> <p>25 (Exhibit 1 marked for identification)</p>	<p style="text-align: right;">Page 25</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 thought it would be convenient.</p> <p>3 MR SCHLITZ: Okay.</p> <p>4 By MR RADER:</p> <p>5 Q. So, Ms Appleton, I will just start</p> <p>6 on the first page; is this document on the first</p> <p>7 page a document that is familiar to you?</p> <p>8 A. Yes.</p> <p>9 Q. In your own words can you describe</p> <p>10 what this document is?</p> <p>11 A. This is a fax from my predecessor,</p> <p>12 Martina Clausung, to our export department to</p> <p>13 arrange shipment of brewer and some cup stacks,</p> <p>14 some capsules.</p> <p>15 Q. So when you say "your predecessor"</p> <p>16 you are referring to in the position of purchasing</p> <p>17 and assisting?</p> <p>18 A. She was the one who was on</p> <p>19 maternity leave.</p> <p>20 Q. And so you took over from her some</p> <p>21 time in 1995?</p> <p>22 A. 1995.</p> <p>23 Q. Now, just to make sure I understand</p> <p>24 the date correctly, this is December 1st 1994,</p> <p>25 this fax?</p>

7 (Pages 22 to 25)

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<p style="text-align: right;">Page 26</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 A. Yes.</p> <p>3 Q. We do it differently in the States.</p> <p>4 A. Yes, you do.</p> <p>5 Q. Now, my understanding, at least</p> <p>6 from counsel, is that this document came from</p> <p>7 files that were described as being your files; is</p> <p>8 that correct?</p> <p>9 A. Yes, that is correct.</p> <p>10 Q. Now, obviously, this is not a</p> <p>11 document that you created, right?</p> <p>12 A. No.</p> <p>13 Q. It is -- it was created and sent at</p> <p>14 a time when you were not yet in the position we</p> <p>15 have been speaking about, right?</p> <p>16 A. Yes.</p> <p>17 Q. So can you just describe what --</p> <p>18 where you located this document?</p> <p>19 A. In my filing cabinet that I</p> <p>20 inherited from my predecessor.</p> <p>21 Q. Where is that filing cabinet</p> <p>22 located?</p> <p>23 A. At the side of my desk.</p> <p>24 Q. That is obviously in your office in</p> <p>25 the Banbury facility?</p>	<p style="text-align: right;">Page 28</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 A. In that particular drawer it is --</p> <p>3 each of the files is a country. So wherever I</p> <p>4 have shipped to, or had any dealings with any</p> <p>5 country then there is the country's name on each</p> <p>6 of those files.</p> <p>7 Q. You say it is things that you have</p> <p>8 shipped to a country; is it just singles</p> <p>9 cartridges or other things that you may have</p> <p>10 shipped at --</p> <p>11 A. Other things.</p> <p>12 Q. -- is that a system, a filing</p> <p>13 system that you inherited from Ms Clausung?</p> <p>14 A. I suppose, yes, and I have put my</p> <p>15 own spin on it, I suppose.</p> <p>16 Q. How so?</p> <p>17 A. Well, I am not sure she kept every</p> <p>18 country. I do not know whether she kept them in</p> <p>19 the format that I keep them in.</p> <p>20 Q. Do you recall what it looked like</p> <p>21 when you inherited it from her?</p> <p>22 A. No, I am afraid I do not.</p> <p>23 Q. Was there a USA file at the time</p> <p>24 you took over the --</p> <p>25 A. Oh, yes, there has always been a</p>
<p style="text-align: right;">Page 27</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 A. Well, it is open plan. I do not</p> <p>3 have an office.</p> <p>4 Q. Is that -- I think that is what we</p> <p>5 referred as cubicles; do you use that word?</p> <p>6 A. We refer to it as open plan because</p> <p>7 we are not partitioned off at all. The --</p> <p>8 MR SCHLITZ: Just desks. It is a</p> <p>9 big room.</p> <p>10 A. Desks within an area.</p> <p>11 BY MR RADER:</p> <p>12 Q. And next to your desk you have a</p> <p>13 filing cabinet and that is where you found the</p> <p>14 documents?</p> <p>15 A. Yes.</p> <p>16 Q. Was it inside a file that was</p> <p>17 labelled in any way?</p> <p>18 A. It is in the hangers that you put</p> <p>19 in there and it is filed USA.</p> <p>20 Q. So the file just says "USA"?</p> <p>21 A. Yes.</p> <p>22 Q. Can you just describe, broadly, in</p> <p>23 that filing cabinet, and this may seem like a very</p> <p>24 detailed set of questions, but what types of</p> <p>25 documents are in that filing cabinet, in general?</p>	<p style="text-align: right;">Page 29</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 USA file.</p> <p>3 Q. -- now, it says here at the top of</p> <p>4 the page "Kraft Jacobs Suchard", did I pronounce</p> <p>5 that correctly?</p> <p>6 A. Jacobs.</p> <p>7 Q. What is that?</p> <p>8 A. Jacobs is the German coffee, as</p> <p>9 Kenco is UK Jacobs is German.</p> <p>10 Q. Is that -- I take it this is...</p> <p>11 A. That is what the company was called</p> <p>12 at one time.</p> <p>13 Q. So was Ms Clausung an employee of</p> <p>14 Kraft Jacobs Suchard?</p> <p>15 A. Yes. As was I.</p> <p>16 Q. So even though you were located in</p> <p>17 the UK technically at the time you were in the</p> <p>18 planning and logistics division you were an</p> <p>19 employee of the German --</p> <p>20 A. No, that was just the name of the</p> <p>21 company at the time. We started off as General</p> <p>22 Foods. Then we had a name change, I think it was</p> <p>23 as we -- as the company obtained certain other</p> <p>24 companies like Suchard that was the name that we</p> <p>25 had at the time, Kraft Jacobs Suchard and then we</p>

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 2 became Kraft Foods.
 3 Q. -- and then below that it says
 4 Maxpax International; what does that refer to?
 5 A. That is what the -- half of the
 6 away from home business was called at the time,
 7 Maxpax. It was simply known as Maxpax. And that
 8 is the in cup and the singles side.
 9 Q. Is that the programme that you
 10 referred to earlier where they get the machine for
 11 free?
 12 A. No, Maxpax was the logo that the
 13 vending machines, the input vending machines were
 14 known as. They were quite innovative at the time
 15 that they were created, the Maxpax machines,
 16 because of the -- how it produced the cup of
 17 coffee, which was in cup. The product was in the
 18 cup and the water filled it.
 19 Previous to that most vending
 20 machines had a tube that the coffee came down and
 21 sometimes you could get half a cup of coffee and
 22 half a cup of soup, whichever you had, and that
 23 was the way vending machines worked. So Maxpax was
 24 the company that created the -- this particular
 25 type of vending machine.

1 Confidential - Attorneys' Eyes Only
 2 are they the people who would actually take
 3 whatever the item is, put it in a box, get it to
 4 the --
 5 A. No, they would liaise with
 6 transport agencies.
 7 Q. -- so in this kind of situation who
 8 would actually go get the thing to be shipped, the
 9 singles cartridges or whatever, put it in a box
 10 and ship it; who would actually do that physical
 11 labour?
 12 A. The capsules in the box would be
 13 done by the factory because they are produced and
 14 created as finished goods in a box and they would
 15 sit in our finished goods warehouse on the Banbury
 16 site. The machines would be in our distribution
 17 warehouse, which at this time was possibly
 18 Hatfield in Hertfordshire, and so an order would
 19 be put on the system to arrange the shipment, and
 20 the guy in the warehouse would pick that order and
 21 it would be loaded on to a container, the
 22 transport company would go in and collect.
 23 Q. So in a situation like the one we
 24 have been talking about, where an order was placed
 25 for a certain amount of product to be sent to the

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1 Confidential - Attorneys' Eyes Only
 2 Q. I see, okay. And you are referring
 3 to the in cup vending machine?
 4 A. Yes.
 5 Q. Who is Sue Stephenson?
 6 A. Sue Stephenson was a person that
 7 worked in our export department at the time and
 8 she was responsible for shipping.
 9 Q. What about Caroline Walley?
 10 A. She also worked there. I am
 11 assuming that as it went to both of them I am not
 12 quite sure whether Caroline may have been on
 13 maternity leave at that time or whether she had
 14 just come back, hence Sue or Caroline.
 15 Q. And since they are sending a fax my
 16 assumption would that be these people are working
 17 at a different facility; is that right?
 18 A. They are in the same office block,
 19 but possibly on a different floor.
 20 Q. So is this the precursor to e-mail?
 21 A. Yes, very much so.
 22 Q. Send a fax to someone working on
 23 another floor?
 24 A. Yes.
 25 Q. When you say they were in shipping,

1 Confidential - Attorneys' Eyes Only
 2 United States, would it be Ms Stephenson and
 3 Ms Walley who would communicate to someone in the
 4 warehouse what needed to be sent? Is that how it
 5 would work?
 6 A. Yes, they would liaise with the
 7 transport agency and possibly the warehouse. In
 8 actual fact at this time I think we would have had
 9 a certain amount of product in the warehouses, the
 10 distribution warehouses, and that would be --
 11 depending on where the deliveries needed to go
 12 post code wise as to how many boxes or cases of
 13 that product would be in the warehouse.
 14 A little bit the same as the
 15 equipment where we need to ensure that we have a
 16 sufficient amount of machines to cover our
 17 forecasts then they would need to ensure that they
 18 had a sufficient amount of cases of equipment to
 19 go out to the customers.
 20 Q. So let me ask you a couple more
 21 questions about this document. In the middle of
 22 the page in the listing of product to be shipped
 23 there is a reference and it says one Spanish
 24 brewer; do you see that?
 25 A. Yes.

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<p style="text-align: right;">Page 34</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 Q. What does that refer to?</p> <p>3 A. That is a singles brewer with</p> <p>4 Spanish branding.</p> <p>5 Q. Were there other types of branding</p> <p>6 as well at the time?</p> <p>7 A. UK branding, French branding,</p> <p>8 German branding.</p> <p>9 Q. Do you have any idea why a Spanish</p> <p>10 brewer was chosen here?</p> <p>11 A. Possibly because we had one in</p> <p>12 stock.</p> <p>13 Q. Were the machines, to your</p> <p>14 knowledge, any different, or was it just --</p> <p>15 A. No, it is just branding.</p> <p>16 Q. -- okay. Then there is a list of</p> <p>17 one case each of various types of coffee; do you</p> <p>18 see that?</p> <p>19 A. Yes.</p> <p>20 Q. I assume those are cases of singles</p> <p>21 cartridges?</p> <p>22 A. Yes.</p> <p>23 Q. And they are supposed to go to a</p> <p>24 Mr David Yuile; did I pronounce that right?</p> <p>25 A. I do not know. I do not know the</p>	<p style="text-align: right;">Page 36</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 against something and that was the vending</p> <p>3 director's sample budget number.</p> <p>4 Q. So you would have to -- sort of on</p> <p>5 an ad hoc basis have some way of accounting it</p> <p>6 within a company?</p> <p>7 A. Yes.</p> <p>8 Q. Now, do you have any idea why</p> <p>9 Mr Yuile was getting a free brewer and free</p> <p>10 singles cartridges?</p> <p>11 A. No.</p> <p>12 Q. Ms Clausing did not tell you when</p> <p>13 she transferred the job to you --</p> <p>14 A. No.</p> <p>15 Q. -- and the cases of singles</p> <p>16 cartridges and the brewer that were -- let me see.</p> <p>17 Let me back up for a minute. Do you know whether</p> <p>18 the singles cartridges that Ms Clausing requested</p> <p>19 here were ever actually sent to Mr Yuile?</p> <p>20 A. Well, the fact that we have put the</p> <p>21 request to Sue one assumes that if he did not</p> <p>22 receive them he would have requested that and</p> <p>23 followed it up because he was obviously expecting</p> <p>24 them.</p> <p>25 Q. Now, you were not in the position</p>
<p style="text-align: right;">Page 35</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 man.</p> <p>3 MR SCHLITZ: You did pronounce it</p> <p>4 right</p> <p>5 BY MR RADER:</p> <p>6 Q. Did you ever have any contact with</p> <p>7 Mr Yuile?</p> <p>8 A. No.</p> <p>9 Q. Never spoken with him?</p> <p>10 A. No.</p> <p>11 Q. Then below that it says the items</p> <p>12 are to be sent free of charge; do you have any</p> <p>13 idea why that was so?</p> <p>14 A. No, not really. They were put</p> <p>15 against a sample budget number which shows below.</p> <p>16 Q. Do you know why Ms Clausing did</p> <p>17 that?</p> <p>18 A. Well, when she passed that on to me</p> <p>19 all she said was this was how we ship this kind of</p> <p>20 thing. The sample budget number I think belonged</p> <p>21 to the vending director. So I think you had to</p> <p>22 pay for the goods from the factory so you could</p> <p>23 not have goods from the factory free of charge so</p> <p>24 although we were sending them to the USA free of</p> <p>25 charge they had to be charged from the factory</p>	<p style="text-align: right;">Page 37</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 at that time where he would have contacted you</p> <p>3 about that, right?</p> <p>4 A. No.</p> <p>5 Q. So do you have any -- did you find</p> <p>6 in your files any documents that confirmed that</p> <p>7 this shipment actually went?</p> <p>8 A. No.</p> <p>9 Q. Did you find any notes from</p> <p>10 Ms Clausing or any other documents at all that</p> <p>11 would corroborate that he received the shipment?</p> <p>12 A. No.</p> <p>13 Q. Now, if the cartridges were</p> <p>14 shipped, the singles cartridges that are listed</p> <p>15 here, they would have been inside a case; is that</p> <p>16 right?</p> <p>17 A. Yes.</p> <p>18 Q. In other words, one case each of</p> <p>19 these different types?</p> <p>20 A. Yes.</p> <p>21 Q. What do those cases look like? Was</p> <p>22 it cardboard?</p> <p>23 A. Cardboard cases. Yes. The capsules</p> <p>24 are in like a kind of laminate sleeve, and then</p> <p>25 there are so many sleeves in a box. I am not</p>

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<p style="text-align: right;">Page 38</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 quite sure of the number.</p> <p>3 Q. But the term "case" would refer to</p> <p>4 the box?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And that box is sealed up at</p> <p>7 the factory?</p> <p>8 A. In the factory, yes.</p> <p>9 Q. Did you -- well, obviously, you</p> <p>10 were not in the position, but just to confirm, did</p> <p>11 you ever actually see the cases that would have</p> <p>12 been sent to Mr Yuile?</p> <p>13 A. No.</p> <p>14 Q. Would Ms Clausing have actually</p> <p>15 seen those cases and seen the box that was being</p> <p>16 shipped --</p> <p>17 A. No.</p> <p>18 Q. -- would Ms Stephenson and</p> <p>19 Ms Walley have actually seen the shipment itself?</p> <p>20 A. No.</p> <p>21 Q. So the only person who would have</p> <p>22 seen what was shipped would have been the person</p> <p>23 at the factory?</p> <p>24 A. The man who would pick the shipment</p> <p>25 at the distribution warehouse.</p>	<p style="text-align: right;">Page 40</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 product shipped?</p> <p>3 A. Yes.</p> <p>4 Q. In all the cases where you placed</p> <p>5 these types of requests you never actually saw the</p> <p>6 boxes that were shipped?</p> <p>7 A. No.</p> <p>8 Q. You did not take them to DHL of</p> <p>9 FedEx or something like that?</p> <p>10 A. No.</p> <p>11 THE COURT REPORTER: Would you wait</p> <p>12 until Mr Rader has finished his question before</p> <p>13 you answer.</p> <p>14 THE WITNESS: Sorry.</p> <p>15 BY MR RADER:</p> <p>16 Q. The next page is K17157. Is this</p> <p>17 another page that you inherited from Ms Clausing?</p> <p>18 A. Yes. That is the request from Andy</p> <p>19 Wiggins to ship the first page.</p> <p>20 Q. Now, I am sorry, I may have asked</p> <p>21 you, but who is Andy Wiggins?</p> <p>22 A. He was, I am not quite sure what</p> <p>23 his title was, but he worked in equipment</p> <p>24 development at that time. It was called equipment</p> <p>25 development.</p>
<p style="text-align: right;">Page 39</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 Q. Okay.</p> <p>3 A. The man produces them at the</p> <p>4 factory, they are in cases. Those cases get</p> <p>5 shipped on a regular basis to the distribution</p> <p>6 warehouses, and this shipment would have been</p> <p>7 arranged with the distribution warehouse with a</p> <p>8 transport company to come in and collect a pallet.</p> <p>9 If you see at the side there it has one pallet, so</p> <p>10 the brewer, and one each of those cases would have</p> <p>11 been picked and strapped to a pallet and then the</p> <p>12 transport agency would come in and collect that</p> <p>13 pallet.</p> <p>14 Q. So somehow Ms Stephenson and</p> <p>15 Ms Walley would have communicated to that person?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know whether that type of</p> <p>18 thing was done by fax or by phone?</p> <p>19 A. I do not. I do not know their</p> <p>20 order system and I do not know whether it works</p> <p>21 the same as it works now.</p> <p>22 Q. Was it the same at a later time</p> <p>23 when you were making these sorts of requests, was</p> <p>24 it a similar kind of procedure where you would</p> <p>25 place a request to someone else who would get the</p>	<p style="text-align: right;">Page 41</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 Q. Do you have any idea why he placed</p> <p>3 this request with Ms Clausing?</p> <p>4 A. No, I do not.</p> <p>5 Q. Did Ms Clausing ever come back from</p> <p>6 maternity leave?</p> <p>7 A. No.</p> <p>8 Q. So she is not with the company now?</p> <p>9 A. No.</p> <p>10 Q. Do you know if Mr Wiggins is at the</p> <p>11 company now?</p> <p>12 A. No.</p> <p>13 Q. I should phrase that again so it is</p> <p>14 not confusing. Is Mr Wiggins at the company now?</p> <p>15 A. No.</p> <p>16 Q. My fault. Now, the next page is</p> <p>17 K17518. Can you describe what this document is?</p> <p>18 A. This is a fax, again to</p> <p>19 Sue Stephenson, to arrange a shipment to the USA.</p> <p>20 Q. So this would have proceeded in a</p> <p>21 similar fashion where she would have made</p> <p>22 arrangements with someone in shipping?</p> <p>23 A. Yes.</p> <p>24 Q. And the date here is August 14th</p> <p>25 1995?</p>

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<p>1 Confidential - Attorneys' Eyes Only</p> <p>2 A. Yes.</p> <p>3 Q. It says here -- is this your</p> <p>4 handwriting, by the way?</p> <p>5 A. It is, yes.</p> <p>6 Q. It says here the shipment was to</p> <p>7 arrive no later than Wednesday, August 23rd 1995;</p> <p>8 do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Why was that?</p> <p>11 A. That was the request that I had</p> <p>12 from the following page.</p> <p>13 Q. Okay. So the next page, that is</p> <p>14 K17159, is that a request that you got from</p> <p>15 Doug Halliday?</p> <p>16 A. Yes.</p> <p>17 Q. Who was Doug Halliday?</p> <p>18 A. He was the vending director for</p> <p>19 Maxpax International at that time.</p> <p>20 Q. And he asked you to make a delivery</p> <p>21 to Mr Craig in New York?</p> <p>22 A. Yes.</p> <p>23 Q. Who was Mr Craig?</p> <p>24 A. Group Research Director Maxwell</p> <p>25 House Division.</p>	<p>1 Confidential - Attorneys' Eyes Only</p> <p>2 previously instructed by my predecessor that this</p> <p>3 is how we dealt with this kind of thing.</p> <p>4 Q. When you say "this kind of thing" I</p> <p>5 want to make sure I understand because all of</p> <p>6 these documents centre around a certain set of</p> <p>7 circumstances where you are sending some product</p> <p>8 to the United States. When you say "this kind of</p> <p>9 thing" is there any kind of name that you would</p> <p>10 put to this activity within your business?</p> <p>11 A. Possibly I would just refer to them</p> <p>12 as ad hoc shipments, you know, on request.</p> <p>13 Q. Meaning it was not part of any</p> <p>14 regular programme, but just something you did if</p> <p>15 you happened to get a request?</p> <p>16 A. Yes.</p> <p>17 Q. Now, for this August 14th 1995</p> <p>18 order did you receive any confirmation from</p> <p>19 Ms Stephenson or from shipping that the shipment</p> <p>20 was actually sent?</p> <p>21 A. No, it does not look like it.</p> <p>22 Q. Did you receive any confirmation</p> <p>23 from Mr Craig that he received it?</p> <p>24 A. No.</p> <p>25 Q. Did he get anything from -- well,</p>
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<p>1 Confidential - Attorneys' Eyes Only</p> <p>2 Q. Did you ever meet Mr Craig?</p> <p>3 A. No.</p> <p>4 Q. Talk to him on the phone?</p> <p>5 A. No.</p> <p>6 Q. Any contact with him?</p> <p>7 A. No.</p> <p>8 Q. Did Mr Halliday explain why the</p> <p>9 product was to be shipped to Mr Craig?</p> <p>10 A. No.</p> <p>11 Q. Did he tell you what Mr Craig was</p> <p>12 going to do with the product?</p> <p>13 A. No.</p> <p>14 Q. Did he tell you if Mr Craig had a</p> <p>15 singles machine somewhere in his facility?</p> <p>16 A. No.</p> <p>17 Q. Now in Mr Halliday's memo to you he</p> <p>18 did not tell you how to make that intracompany</p> <p>19 charge, did he?</p> <p>20 A. No.</p> <p>21 Q. You charged it against the same</p> <p>22 sample budget number?</p> <p>23 A. Yes.</p> <p>24 Q. How did you decide to do that?</p> <p>25 A. Because that is what I was</p>	<p>1 Confidential - Attorneys' Eyes Only</p> <p>2 let me back up. Do you know which shipping</p> <p>3 service you used?</p> <p>4 A. No, I do not on this occasion. It</p> <p>5 does normally say on the invoice if we do receive</p> <p>6 a copy of the invoice. But I have written on the</p> <p>7 bottom to Sue Stephenson: "Can you please advise</p> <p>8 shipment departure and arrival times" simply</p> <p>9 because this one was going airfreight. So I would</p> <p>10 assume that I would have received that possibly --</p> <p>11 could have been by e-mail, which I have not kept.</p> <p>12 Q. Do you have any recollection as you</p> <p>13 sit here today of getting that confirmation?</p> <p>14 A. No.</p> <p>15 Q. Okay. Let us move on to the next</p> <p>16 one, K17160. This is another fax from you to</p> <p>17 Ms Stephenson dated April 2nd, 1996?</p> <p>18 A. Yes.</p> <p>19 Q. This was for a shipment to a Ms</p> <p>20 Helen Glus; is that right?</p> <p>21 A. Yes.</p> <p>22 Q. Who is Ms Glus?</p> <p>23 A. I am not quite sure what her title</p> <p>24 was actually.</p> <p>25 Q. Did you have occasion to speak with</p>

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<p style="text-align: right;">Page 46</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 her directly?</p> <p>3 A. No.</p> <p>4 Q. Or meet with her?</p> <p>5 A. No.</p> <p>6 Q. Do you know why -- on this occasion</p> <p>7 do you know who requested that you make the</p> <p>8 shipment to Ms Glus?</p> <p>9 A. I would say Liz Matthews again who</p> <p>10 was Doug Halliday's secretary because I have put</p> <p>11 at the bottom there: "Can you let me know details</p> <p>12 to pass to Liz Matthews".</p> <p>13 Q. Okay. Do you recall the</p> <p>14 conversation with Ms Matthews about this?</p> <p>15 A. No.</p> <p>16 Q. I realise it was a long time ago.</p> <p>17 A. Yes.</p> <p>18 Q. Do you recall if she told you why</p> <p>19 this shipment was being made?</p> <p>20 A. No.</p> <p>21 Q. Did she tell you anything about</p> <p>22 whether Ms Glus had a singles machine or where it</p> <p>23 was or how she was using it?</p> <p>24 A. No.</p> <p>25 Q. Again, the actual cases -- let me</p>	<p style="text-align: right;">Page 48</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 A. I do not recall at all what we had.</p> <p>3 Q. Do you nowadays, let us talk about</p> <p>4 nowadays.</p> <p>5 A. Yes.</p> <p>6 Q. Do you drink singles coffee?</p> <p>7 A. No, I drink singles tea.</p> <p>8 Q. Okay. Have you ever drunk singles</p> <p>9 coffee?</p> <p>10 A. Yes.</p> <p>11 Q. So you are a coffee drinker?</p> <p>12 A. Occasionally, yes.</p> <p>13 Q. Do you recall when was the first</p> <p>14 time that you had occasion to drink a cup of</p> <p>15 singles brew coffee?</p> <p>16 A. It would have been probably at the</p> <p>17 launch of the singles brewer in the UK. I do not</p> <p>18 know what date that was, to be honest.</p> <p>19 Q. Do you recall when you first got a</p> <p>20 singles machine on the landing or anywhere else at</p> <p>21 the office that you used?</p> <p>22 A. No, I do not recall at all.</p> <p>23 Q. I do not think it is part of your</p> <p>24 job description, but I just need to confirm a</p> <p>25 couple of things; do you have any involvement at</p>
<p style="text-align: right;">Page 47</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 back up for a second. It says "3 cases of" and</p> <p>3 then there is an identification number; do you see</p> <p>4 that?</p> <p>5 A. Yes.</p> <p>6 Q. Does that refer to a particular</p> <p>7 flavour of singles cartridges?</p> <p>8 A. It is medium roast.</p> <p>9 Q. So you recognise these numbers?</p> <p>10 A. Yes.</p> <p>11 Q. And, again, those cases would have</p> <p>12 been shipped by someone that Ms Stephenson</p> <p>13 contacted?</p> <p>14 A. Yes.</p> <p>15 Q. You did not see the box or anything</p> <p>16 like that?</p> <p>17 A. No.</p> <p>18 Q. Back at the time in 1995, '96 in</p> <p>19 your office where you worked did you have a</p> <p>20 singles brewer?</p> <p>21 A. I think we have our vending</p> <p>22 equipment on the landing of each floor for the use</p> <p>23 of all of the people on each floor.</p> <p>24 Q. Did you have that -- do you recall</p> <p>25 whether you had at the time, '95/96?</p>	<p style="text-align: right;">Page 49</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 all with design of cartridge products?</p> <p>3 A. No.</p> <p>4 Q. Over the years at Kraft have you</p> <p>5 ever been involved with engineering or technical</p> <p>6 design for singles cartridges for example?</p> <p>7 A. No.</p> <p>8 Q. Have you ever studied the technical</p> <p>9 features of singles cartridges?</p> <p>10 A. No. Only from an interest point of</p> <p>11 view, how does it work.</p> <p>12 Q. In terms of -- when you say how</p> <p>13 does it work, can you flesh that out a little bit</p> <p>14 more?</p> <p>15 A. Well, I think it was -- I did a</p> <p>16 factory visit and saw the capsules being produced</p> <p>17 and so you see the tea going in and the little</p> <p>18 channel round the outside that the water goes</p> <p>19 round and then it punctures and the water floods</p> <p>20 in and brews through.</p> <p>21 Q. So did you ever take a singles</p> <p>22 cartridge in your hand and carefully study it for</p> <p>23 any product features or technical aspects or</p> <p>24 anything like that?</p> <p>25 A. Only as a matter of interest,</p>

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1 Confidential - Attorneys' Eyes Only
 2 peeling the top off to see how it works.
 3 Q. Are you familiar at all with
 4 changes to the design of the singles cartridge
 5 over time or anything like that?
 6 A. No.
 7 Q. When you use a singles cartridge
 8 today or when you have used them to insert them
 9 into a machine did you study them at all, or were
 10 you mainly interested in putting it in a machine
 11 to make a cup of coffee?
 12 A. Mainly interested in a cup of tea
 13 or a cup of coffee.
 14 Q. Let us go on to the next page,
 15 which is K17161, and let us see, now this is --
 16 can you just describe what this document is?
 17 A. This is a copy of the invoice
 18 relating to the following page where I have
 19 requested a shipment.
 20 Q. Okay, so this -- I see it. So this
 21 invoice is dated August 2nd 1996?
 22 A. Yes.
 23 Q. And you placed a request on the
 24 next page, K17161?
 25 A. Yes.

1 Confidential - Attorneys' Eyes Only
 2 order/invoice would be the documentation that she
 3 would put in.
 4 Q. So an invoice like this, I just
 5 want to make sure, that an invoice like this is
 6 what would actually trigger the shipment to
 7 happen?
 8 A. Yes.
 9 Q. So looking at the fax that you
 10 sent, K17162, do you know whether you sent this in
 11 as a result of receiving the e-mail in the next
 12 page there?
 13 A. Yes, this was -- the e-mail was to
 14 Liz Matthews, but she has obviously printed it off
 15 and given it to me and asked me to arrange
 16 shipment.
 17 Q. That is your handwriting at the
 18 bottom of K17163?
 19 A. Yes.
 20 Q. Now, the e-mail came from someone
 21 named Geri Greto; do you see that?
 22 A. Yes.
 23 Q. Who is Geri Greto?
 24 A. Well, looking at this now she
 25 worked for Bill Craig.

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1 Confidential - Attorneys' Eyes Only
 2 Q. Placed a request on July 10, 1996,
 3 right?
 4 A. Yes.
 5 Q. Any reason why it took them a few
 6 weeks to generate the invoice?
 7 A. Possibly we might have been waiting
 8 for the product. That is the only thing I can
 9 think of because this was not forecasted product.
 10 So in fact you were stealing from the UK
 11 production. They may have been short of certain
 12 items at that time. Then we wait until it is okay
 13 to take them because the UK business, because
 14 their forecast would take precedent.
 15 Q. So normally if the product was in
 16 stock and you had plenty of it you would expect
 17 the invoice to be generated sooner?
 18 A. Yes.
 19 Q. At the bottom of the invoice it is
 20 Sue Stephenson who is the signatory?
 21 A. Yes.
 22 Q. So you were not the signatory on
 23 invoices like this?
 24 A. No, this is what she put into her
 25 system to arrange the shipment. So the

1 Confidential - Attorneys' Eyes Only
 2 Q. Did you have any contact with her?
 3 A. I do not recall. It is possible
 4 that she may have rang me, but I cannot recall at
 5 all.
 6 Q. Again, for this shipment to
 7 Mr Craig it would have been someone off in the
 8 warehouse who actually packed it up and shipped
 9 it?
 10 A. Yes.
 11 Q. So you never actually saw these
 12 three boxes?
 13 A. No.
 14 Q. Did you get any confirmation that
 15 Mr Craig -- sorry, first, that the shipment
 16 actually went out?
 17 A. The copy invoice would be my
 18 confirmation that it had been arranged.
 19 Q. Did you get any confirmation that
 20 he received it?
 21 A. No.
 22 Q. Now, let us move on to the next
 23 one. Now we are on K17164, and I will also ask you
 24 to look at K17165. This looks like another
 25 shipment to Ms Glus; is that right?

14 (Pages 50 to 53)

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<p style="text-align: right;">Page 54</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 A. Yes.</p> <p>3 Q. Now, on K17165, the memo that you</p> <p>4 got from -- that is the memo that you received</p> <p>5 from Ms Matthews; is that right?</p> <p>6 A. Yes.</p> <p>7 Q. And it references a Louis</p> <p>8 Camilleri; do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Have you ever met or spoken with</p> <p>11 him?</p> <p>12 A. No.</p> <p>13 Q. Do you know -- it refers here on</p> <p>14 17176 to one capsule storage unit.</p> <p>15 A. Yes.</p> <p>16 Q. What is that?</p> <p>17 A. That is just a moulded unit that</p> <p>18 fits at the side of the brewer to hold the</p> <p>19 capsules.</p> <p>20 Q. So that is just to store product</p> <p>21 prior to it going into the machine?</p> <p>22 A. Yes. It is just so it is available</p> <p>23 there at the side of the machine.</p> <p>24 Q. And did you have any knowledge at</p> <p>25 the time of whether Mr Camilleri had a singles</p>	<p style="text-align: right;">Page 56</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 A. I would assume that that was</p> <p>3 possibly -- it does not sound like it was a UK</p> <p>4 costs centre. So I am just wondering whether this</p> <p>5 was something that Helen or Louis had given Liz to</p> <p>6 charge it to his cost centre. But whichever it</p> <p>7 would seem as if we could not, which is why we</p> <p>8 have gone with the sample budget number.</p> <p>9 Q. So you end up the using the same</p> <p>10 number?</p> <p>11 A. Yes. Which makes me think that</p> <p>12 that might have been an American cost centre which</p> <p>13 we would not have been able to use.</p> <p>14 Q. Okay. Again, this shipment would</p> <p>15 have been sent by someone that Ms Stephenson</p> <p>16 contacted --</p> <p>17 A. Yes.</p> <p>18 Q. -- you did not see the boxes</p> <p>19 yourself?</p> <p>20 A. No.</p> <p>21 Q. All these shipments that went out</p> <p>22 did you make any effort to inspect the product</p> <p>23 before it went to see exactly what it looked like</p> <p>24 or anything like that?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 55</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 machine or where it was in his facility and what</p> <p>3 he was doing with it?</p> <p>4 A. No.</p> <p>5 Q. Did you ever get any sense of that?</p> <p>6 A. Well, I would have assumed the fact</p> <p>7 that I am shipping him product he had a singles</p> <p>8 brewer. Because what would he want the product</p> <p>9 for. The nature of the capsule -- with in cup</p> <p>10 products you have product in a cup and you can</p> <p>11 have a particular product and you can tip it in a</p> <p>12 cup and you can pour hot water on it and you can</p> <p>13 make a cup of coffee. You cannot do that with a</p> <p>14 capsule. You have to have the brewer to dispense</p> <p>15 it.</p> <p>16 Q. Other than --</p> <p>17 A. Yes --</p> <p>18 Q. Did you get any other</p> <p>19 confirmation --</p> <p>20 A. -- no.</p> <p>21 Q. -- now, this one indicates -- well,</p> <p>22 at least in the request to you from Ms Matthews</p> <p>23 says "charged to cost creditor 6500"?</p> <p>24 A. Yes.</p> <p>25 Q. What does that mean?</p>	<p style="text-align: right;">Page 57</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 Q. Then we have an invoice on K17166,</p> <p>3 let us see, this is February 13th of 1997; is that</p> <p>4 right?</p> <p>5 A. Yes.</p> <p>6 Q. Does that -- can you just confirm,</p> <p>7 does that go with the...</p> <p>8 A. I think that goes with 67, 68 and</p> <p>9 69.</p> <p>10 Q. Okay. So from K17166 through 69</p> <p>11 these documents refer to one shipment?</p> <p>12 A. Yes.</p> <p>13 Q. Maybe let us start backwards on</p> <p>14 K17169; is this the request that you got from</p> <p>15 Ms Matthews to do another shipment to Ms Glus and</p> <p>16 Mr Camilleri?</p> <p>17 A. Yes.</p> <p>18 Q. And then K17168 is your request to</p> <p>19 Ms Stephenson?</p> <p>20 A. Yes.</p> <p>21 Q. Now, there are some references here</p> <p>22 to a Phillip Morris broker, Martin Strauss, with a</p> <p>23 phone number; do you see those?</p> <p>24 A. Yes.</p> <p>25 Q. Who was that?</p>

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<p style="text-align: right;">Page 58</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 A. To be perfectly honest I do not</p> <p>3 know. I can only assume it is the broker that</p> <p>4 deals with the clearance of the shipment.</p> <p>5 Q. Do you recall speaking with him at</p> <p>6 all?</p> <p>7 A. No.</p> <p>8 Q. Then on K17167 a fax from DFDS</p> <p>9 Transport; can you describe what this is?</p> <p>10 A. This looks like confirmation of the</p> <p>11 flight details.</p> <p>12 Q. This would be flight details for</p> <p>13 the shipment of --</p> <p>14 A. For the shipment, yes.</p> <p>15 Q. -- so this was a flight that was to</p> <p>16 occur four days later on February 15th?</p> <p>17 A. Yes.</p> <p>18 Q. I am sorry, there are two</p> <p>19 flights --</p> <p>20 A. From Amsterdam to New York. It has</p> <p>21 gone to Amsterdam and then it has gone on to New</p> <p>22 York.</p> <p>23 Q. -- so it was -- I just want to make</p> <p>24 sure I understand -- it was to fly from the UK to</p> <p>25 Amsterdam on February 12th?</p>	<p style="text-align: right;">Page 60</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 Q. Okay. Let us -- almost done with</p> <p>3 these -- let us move on to K17170. Does that --</p> <p>4 are these last two pages 170 and 171 -- do they go</p> <p>5 together?</p> <p>6 A. Yes.</p> <p>7 Q. So K17170, is that a memo that you</p> <p>8 received from Ms Greto?</p> <p>9 A. Yes.</p> <p>10 Q. Do you recall receiving it?</p> <p>11 A. Well, yes, it is my file, so I</p> <p>12 would have received it.</p> <p>13 Q. I know it was in your files, but I</p> <p>14 said do you recall whether you received this and</p> <p>15 looking at it do you have a specific memory of it?</p> <p>16 A. No.</p> <p>17 Q. This is early 1998, correct?</p> <p>18 A. This is January 5th 1998.</p> <p>19 Q. And then you respond to her on</p> <p>20 January 12th, the next page?</p> <p>21 A. Yes.</p> <p>22 Q. It looks like at that time</p> <p>23 Ms Virdee became the new contact in the export</p> <p>24 department?</p> <p>25 A. I think what happened possibly at</p>
<p style="text-align: right;">Page 59</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 A. (Witness nodded).</p> <p>3 Q. And then from Amsterdam to New York</p> <p>4 on the 15th?</p> <p>5 A. That looks like the case.</p> <p>6 Q. Did you get any confirmation</p> <p>7 afterwards that it actually went on those flights</p> <p>8 and arrived safely?</p> <p>9 A. No.</p> <p>10 Q. Now, on K17166 the signatory at the</p> <p>11 bottom is a Lindsey Virdee; do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Who is Ms Virdee?</p> <p>14 A. I think she must have been a</p> <p>15 different person within the export department. I</p> <p>16 am not quite sure whether Sue had left by that</p> <p>17 time and Lindsey took over or whether Sue was</p> <p>18 still there but Lindsey just took over the</p> <p>19 shipment.</p> <p>20 Q. Do you know if Lindsey is still at</p> <p>21 the company?</p> <p>22 A. I do not believe she is.</p> <p>23 Q. Did you know her when she was at</p> <p>24 the company?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 61</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 that time was that instead of going through</p> <p>3 Liz Matthews and then coming through to me to</p> <p>4 export it looks as if maybe we cut out the middle</p> <p>5 men, if you like, and requested that Geri go</p> <p>6 straight to export.</p> <p>7 Q. I see. So Ms Virdee -- well, let</p> <p>8 me make sure I understand -- Ms Virdee was in a</p> <p>9 different department from Ms Stephenson?</p> <p>10 A. No, she was within the export</p> <p>11 department.</p> <p>12 Q. Okay.</p> <p>13 A. But instead of Geri sending the fax</p> <p>14 to Liz, Liz sending the fax to me, me sending the</p> <p>15 fax to Sue/Lindsey, I think we have asked in</p> <p>16 future can you go through straight to Lindsey and</p> <p>17 she will arrange shipment.</p> <p>18 Q. Okay. I understand. So at this</p> <p>19 point did you deal with -- do you have any direct</p> <p>20 involvement, put it that way, with this new</p> <p>21 requested shipment, or did it just pass to --</p> <p>22 A. No, I would say it passed to</p> <p>23 Lindsey that particular one.</p> <p>24 Q. -- so do you have any idea of what</p> <p>25 happened after this fax, whether there was</p>

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<p style="text-align: right;">Page 62</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 shipment sent or anything like that?</p> <p>3 A. No.</p> <p>4 Q. All right. We have been going for</p> <p>5 over an hour. Why don't we take a five minute</p> <p>6 break.</p> <p>7 (Off the record at 10.25 am)</p> <p>8 (On the record at 10.37 am)</p> <p>9 MR RADER: I have asked the court</p> <p>10 reporter to mark as Exhibit 2 the document with</p> <p>11 number K17172.</p> <p>12 (Exhibit 2 marked for identification)</p> <p>13 A newspaper article entitled: "Sly spends £1,000</p> <p>14 on a cup of coffee"; Ms Appleton, does this</p> <p>15 document look familiar to you?</p> <p>16 A. Yes.</p> <p>17 Q. Did it come from your file cabinet?</p> <p>18 A. No.</p> <p>19 Q. Are you the one who located it?</p> <p>20 A. No.</p> <p>21 Q. How are you familiar with it?</p> <p>22 A. Because I remember the buzz at the</p> <p>23 time in the office that Sly Stallone has -- had --</p> <p>24 we put a machine, I think it was Shepperton</p> <p>25 Studios, I am not quite sure, but we put a machine</p>	<p style="text-align: right;">Page 64</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 singles?</p> <p>3 A. No.</p> <p>4 Q. The article mentions a voltage</p> <p>5 issue in the last sentence; do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Are you familiar at all with the</p> <p>8 use of singles brewing machines on US voltage?</p> <p>9 A. Yes.</p> <p>10 Q. How does that work?</p> <p>11 A. There is a lead that fits into the</p> <p>12 back of the machine with a plug on the end, and it</p> <p>13 is just a case of putting a different lead in the</p> <p>14 box. If they are ever shipped to a different</p> <p>15 country they have a different voltage you just</p> <p>16 ship them another lead that fits their voltage.</p> <p>17 Q. So to your knowledge there should</p> <p>18 be a way to use these brewers in the US?</p> <p>19 A. Yes.</p> <p>20 Q. I am going to ask the court</p> <p>21 reporter to mark Exhibit 3.</p> <p>22 (Exhibit 3 marked for identification)</p> <p>23 The documents in Exhibit 3, are you familiar with</p> <p>24 them?</p> <p>25 A. Only the 17249.</p>
<p style="text-align: right;">Page 63</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 there for him to use. And I remember him taking</p> <p>3 it back to the States with him and I remember it</p> <p>4 being in the paper and the paper would have done</p> <p>5 the rounds in the office.</p> <p>6 Q. So you -- your recollection of this</p> <p>7 article is from the time -- around the time it was</p> <p>8 published?</p> <p>9 A. Yes.</p> <p>10 Q. Have you seen it recently, in the</p> <p>11 last weeks or months?</p> <p>12 A. No.</p> <p>13 Q. Shepperton Studios that you</p> <p>14 mentioned, to your knowledge is that in the UK?</p> <p>15 A. Yes.</p> <p>16 Q. Do you have -- did you ever</p> <p>17 participate in shipping any singles cartridges to</p> <p>18 Mr Stallone in the US?</p> <p>19 A. No.</p> <p>20 Q. Do you know anybody else at Kraft</p> <p>21 who did that?</p> <p>22 A. No.</p> <p>23 Q. Other than this article do you have</p> <p>24 any other knowledge other than what you read in</p> <p>25 this article about Mr Stallone's involvement with</p>	<p style="text-align: right;">Page 65</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 Q. So 17249, which is a fax from you</p> <p>3 to Geri Greto I assume?</p> <p>4 A. Yes.</p> <p>5 Q. Did that come --</p> <p>6 A. One of the previous documents in</p> <p>7 here.</p> <p>8 Q. -- did that come from your file</p> <p>9 cabinet?</p> <p>10 A. Yes.</p> <p>11 Q. I realise a number of pages have</p> <p>12 been grouped together here, the other pages in</p> <p>13 this group are not from your file cabinet?</p> <p>14 MR SCHLITZ: Look carefully at the</p> <p>15 rest of the pages.</p> <p>16 A. Yes, the 249 and 250 look like</p> <p>17 duplicates. It is exactly the same. And the</p> <p>18 other one is the original memo from Geri, linked</p> <p>19 to the fax to Geri saying that Lindsey Virdee is</p> <p>20 the new contact.</p> <p>21 MR RADER: Right.</p> <p>22 THE WITNESS: I have never seen 247</p> <p>23 and I have never seen 248.</p> <p>24 BY MR RADER:</p> <p>25 Q. Okay. So just focussing for a</p>

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DEPOSITION OF J. APPLETON

<p style="text-align: right;">Page 78</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 BY MR RADER:</p> <p>3 Q. So nominally with the document</p> <p>4 retention and destruction policy that might</p> <p>5 suggest that the documents would not be around any</p> <p>6 more but you happened to have kept them?</p> <p>7 A. Yes.</p> <p>8 Q. Did you go back and look at any</p> <p>9 archive boxes to see if there were any other</p> <p>10 documents from this timeframe --</p> <p>11 A. No.</p> <p>12 Q. -- when you add faxes and the other</p> <p>13 documents that we have looked at in these ad hoc</p> <p>14 shipments, as you describe them, did you have any</p> <p>15 formal record keeping procedure that you were</p> <p>16 required to go by to produce documents?</p> <p>17 A. No.</p> <p>18 Q. Do you know whether you kept all of</p> <p>19 the faxes and documents related to these, or are</p> <p>20 these just ones that you happened to see in the</p> <p>21 file?</p> <p>22 A. Well, obviously these are the ones</p> <p>23 that are in the file, but I am not quite sure</p> <p>24 whether -- you can tell, I think, that there are</p> <p>25 possibly some missing documents because you</p>	<p style="text-align: right;">Page 80</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 way that they are kept in that file?</p> <p>3 A. Yes.</p> <p>4 Q. Now, Mr Rader asked you about</p> <p>5 whether you got confirmation that certain</p> <p>6 shipments actually were received, it is part of</p> <p>7 your responsibilities, did it ever come to your</p> <p>8 attention that shipments were not received?</p> <p>9 A. Yes.</p> <p>10 Q. Could you explain that.</p> <p>11 A. Well, once you have arranged the</p> <p>12 shipment because the person at the other end would</p> <p>13 be expecting them, if they did not arrive there</p> <p>14 would either be a phone call to say where is the</p> <p>15 shipment, and I would investigate that with the</p> <p>16 export department and they would follow that up.</p> <p>17 Q. Then what would happen?</p> <p>18 A. If -- well, I am assuming they</p> <p>19 would feed back to me and say give me the details,</p> <p>20 but none of it is documented with that kind of...</p> <p>21 Q. So if there was a problem you would</p> <p>22 hear about it?</p> <p>23 A. Oh, yes.</p> <p>24 Q. Okay. Mark this as Defendant's</p> <p>25 Exhibit 1.</p>
<p style="text-align: right;">Page 79</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 have -- you should have a fax and a copy invoice</p> <p>3 for each of those. But sometimes they did not fax</p> <p>4 the copy invoice back and I obviously did not</p> <p>5 follow up.</p> <p>6 Q. Do you know Mr Lee Rowan?</p> <p>7 A. No.</p> <p>8 Q. It is two minutes after 11.00 and I</p> <p>9 predicted we would be done by 11.00. I do not have</p> <p>10 any further questions. I just want to thank you</p> <p>11 for your time and for coming in. If Mr Schlitz</p> <p>12 wants to ask you any questions he is certainly</p> <p>13 welcome to do that.</p> <p>14 THE WITNESS: Thank you.</p> <p>15 MR SCHLITZ: I have a few</p> <p>16 questions. First, today Mr Rader has shown you</p> <p>17 Exhibit 1 and Exhibit 4 and you have testified</p> <p>18 these are documents in the United States file; is</p> <p>19 that correct?</p> <p>20 A. Oh my United States file, yes,</p> <p>21 sorry.</p> <p>22 Q. This file, is this kept in the</p> <p>23 ordinary course of your business?</p> <p>24 A. Yes.</p> <p>25 Q. Did you provide the documents the</p>	<p style="text-align: right;">Page 81</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 (Defendant's Exhibit 1 marked for identification)</p> <p>3 This is K001746 through K0017467. Would you</p> <p>4 please look through these four pages first</p> <p>5 (pause).</p> <p>6 A. Okay.</p> <p>7 Q. Please look at K001746; is this</p> <p>8 your handwriting?</p> <p>9 A. Yes, it is.</p> <p>10 Q. It is dated August 2nd, 1996; is</p> <p>11 that correct?</p> <p>12 A. Yes.</p> <p>13 Q. It is from you; is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. And to Geri Greto; is that correct?</p> <p>16 A. Yes.</p> <p>17 Q. Can you explain what this document</p> <p>18 is?</p> <p>19 A. This is just me saying to Geri that</p> <p>20 we have realised that the shipment that she had</p> <p>21 requested in July had not been sent, apologising</p> <p>22 and telling them that it was being dispatched that</p> <p>23 particular day.</p> <p>24 Q. And when you say it has been</p> <p>25 dispatched that particular day, that is something</p>

21 (Pages 78 to 81)

Exhibit 4

**THIS EXHIBIT HAS BEEN
REDACTED IN ITS ENTIRETY**